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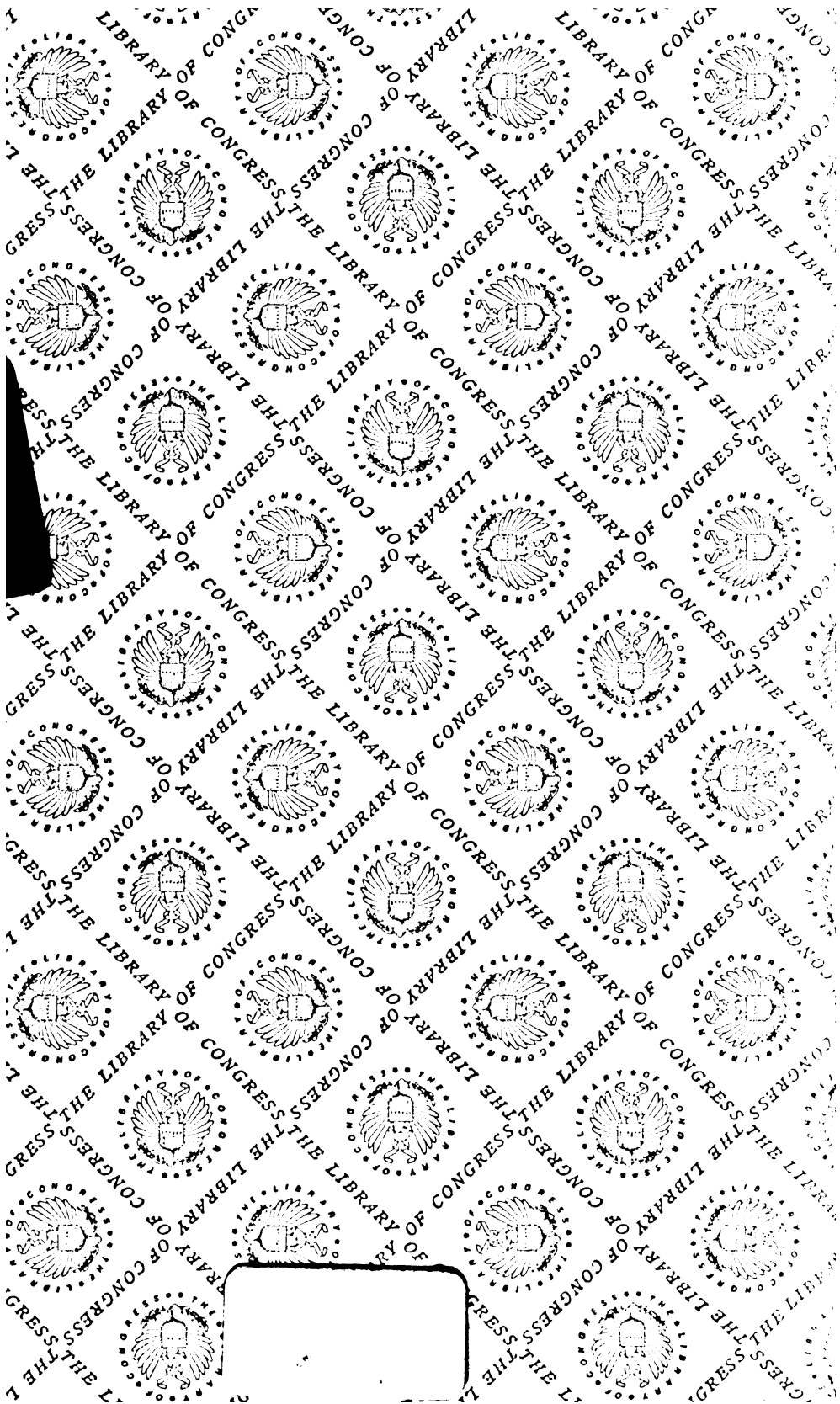
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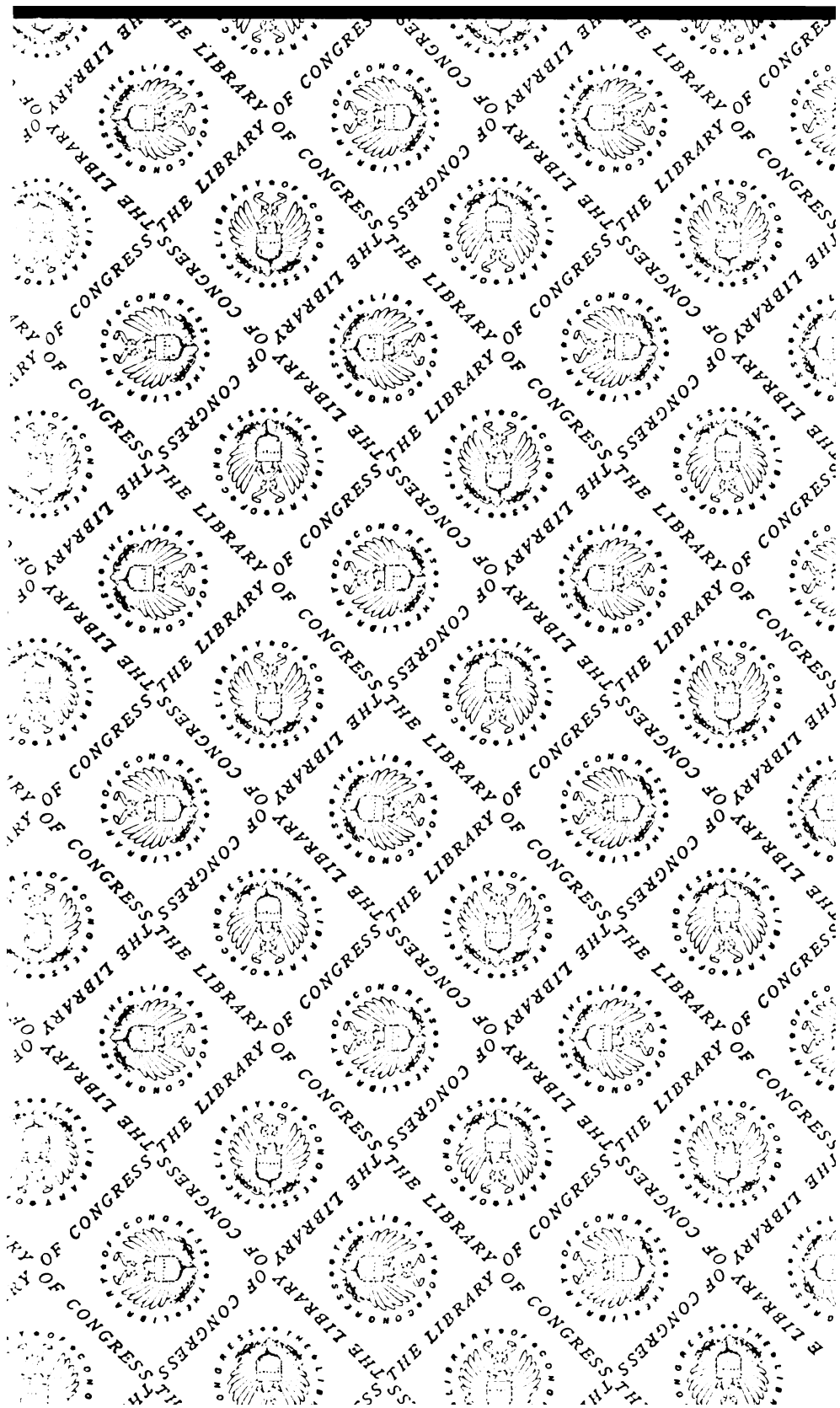
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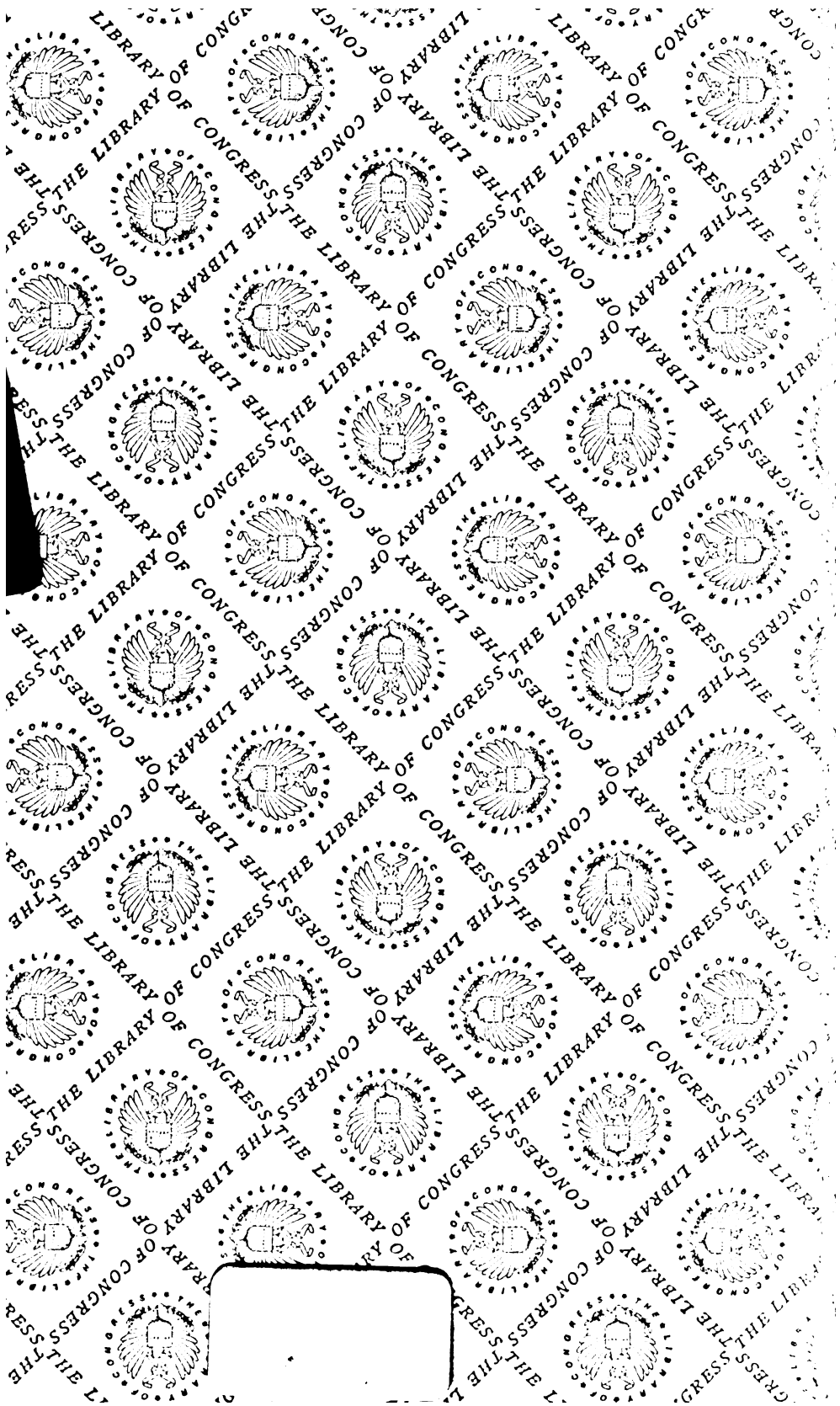
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BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

OF THE

HOUSE OF REPRESENTATIVES

ON

H. R. 10840,

TO PROVIDE FOR THE INVESTIGATION OF CONTROVERSIES
AFFECTING INTERSTATE COMMERCE, AND
FOR OTHER PURPOSES.

Arbitration

Dec. 14, 1906 - Jan. 12, 1907.

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TO PROVIDE FOR THE INVESTIGATION OF CONTROVER- SIES AFFECTING INTERSTATE COMMERCE, AND FOR OTHER PURPOSES. (H. R. 10840.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Friday, December 14, 1906.

Committee called to order at 10.40 a. m.

Mr. TOWNSEND. Mr. Chairman, I would like to make a statement with reference to this bill before the regular hearings proceed. At the meeting one week ago to-day it was suggested that we notify men connected with concerns that would be liable to be interested in the provisions of this bill, and to that end I sent out invitations to heads of various labor organizations and various manufacturing organizations throughout the country, as well as to gentlemen who have been interested in these matters, such as Professor Clark, of the Columbian University, and also notified the Department of Commerce and Labor.

The bill, as I have stated before to the committee, is practically the draft of the bill recommended by Charles Francis Adams at the time of the coal strike arbitration in 1902. There are one or two things in the bill that I think ought to be changed; for instance, where it refers to the Secretary of the Interior. I think it should be the Secretary of Commerce and Labor. When that bill was drafted there was no Secretary of Commerce and Labor.

The bill is calculated to bring about an investigation into the troubles mentioned in it, and relies for the benefits which it will bring to the people upon the publicity that such investigation will call forth. It does not seek to force arbitration. I am satisfied in my own mind, after making an investigation, that it is entirely within our powers to pass such a bill as this, but I have consulted attorneys who I think are authorities on the subject, and I believe the powers are similar to those we exercise through the Bureau of Manufactures.

Mr. RICHARDSON. You do not consider that your bill has any limitation at all? When you use the words "conditions of employment," that applies to all affairs, does it not?

Mr. TOWNSEND. It applies to all such affairs as would affect the transportation of the United States mails, the operations, civil or military, of the Government of the United States, or the free and regular movement of commerce among the several States.

Mr. RICHARDSON. Applicable to any of the conditions where wages or hours of labor are involved?

Mr. TOWNSEND. Yes; if the questions involved should result in a disturbance of the conditions that would affect the Federal rights which I mention in the bill.

Mr. RICHARDSON. You use in the bill these words: "Between an employer being an individual, partnership, association, corporation,

or other combination." That, it seems to me, is as broad as the English language can make it.

Mr. TOWNSEND. It is intended to be so anyway. Now, only under such conditions as affect the Federal rights, as I have mentioned here, would the President be justified in making such an investigation.

Mr. MANN. When you say interfering "with the free and regular movement of commerce among the several States," does that relate to the actual movement of commerce or to the production of commerce that might be moved?

Mr. TOWNSEND. I think it is intended to be broad enough to affect both where it is necessary.

Mr. STEVENS. Can you indicate to us the difference between this and the statute of 1898?

Mr. TOWNSEND. The statute of 1898 applies to employees in interstate commerce on railroads and is a sort of compulsory arbitration. It imposes a condition that a commission, which is provided for, shall proceed to hear and award according to the findings; and there are certain conditions under which it has power to control, or seeks to control, relating to the retention in their employment of labor during a strike.

Mr. ESCH. Has that statute ever been invoked?

Mr. TOWNSEND. If I understood correctly from Mr. Garfield this morning, it had not. I had supposed it had. I am not familiar with it. I know that a certain clause was decided in either Kentucky or Tennessee, and it was held that the statute was unconstitutional.

Mr. GARFIELD. I have not known that it had been invoked.

Mr. TOWNSEND. While the same question is pending before two other Federal courts at the present time, the Attorney-General, for instance, does not feel that this matter has been determined. In fact, this was the case to which the President practically referred as one of the cases which required appeal in criminal cases.

Mr. STEVENS. Then it must have been invoked before the court.

Mr. TOWNSEND. That is my understanding.

Mr. RICHARDSON. I do not see, under a fair and reasonable construction of the language of this bill, why it will not apply to what is commonly known as crop sharers, where a farmer and a tenant enter into an agreement along those lines. The question of his interest in the crop, his wages, and all of that, could fairly come under the jurisdiction of this bill.

Mr. TOWNSEND. That is a very extreme case.

Mr. RICHARDSON. But it is a fact.

Mr. MANN. Would it not be well to proceed with the hearing?

Mr. TOWNSEND. I should much prefer that.

I want to say further that I have received communications from a great many of the gentlemen in reply to mine who have stated to me that they wanted to be heard, but that it would be impossible for them to appear before the holidays, and that they would like to have the hearings extended, in the hope that they would not be completed until after the holidays.

Mr. BURKE. Do your letters come from both sides?

Mr. TOWNSEND. Yes.

**STATEMENT OF MR. CHARLES P. NEILL, COMMISSIONER OF
LABOR.**

Mr. TOWNSEND. Mr. Neill, what position do you occupy with reference to the Government at present?

Mr. NEILL. I am the Commissioner of Labor.

Mr. TOWNSEND. How long have you been Commissioner of Labor?

Mr. NEILL. Two years this coming February.

Mr. TOWNSEND. What was your business before your appointment as Commissioner of Labor?

Mr. NEILL. I was professor of political economy in the Catholic University of Washington, and had been there since 1895.

Mr. TOWNSEND. Did you have anything to do with the arbitration of 1902?

Mr. NEILL. The coal strike? Yes; I was the assistant recorder of the commission.

Mr. TOWNSEND. So that you had an opportunity to observe and know what was done in that arbitration?

Mr. NEILL. Yes, sir. I had entire charge of the statistical work of the commission, and, as a matter of fact, a position that corresponded to that of referee in a court; that is, all the questions concerning statistics were thrashed out before me. When the operators filed their statistics, they were then made accessible to representatives of the miners. Then both sides, after the miners had had opportunity to look over them, came before me and made arguments. By that method of elimination practically all of those statistics about which there was any controversy were set aside, and there was submitted to the commission only statistics which both sides had agreed to accept. I was also present at all discussions of the commission, and helped in the preparation of the report.

Mr. TOWNSEND. Have you had anything to do with the administration of the law referred to here this morning as the law of 1898?

Mr. NEILL. No; nothing at all.

Mr. TOWNSEND. Have you looked over House bill 10840?

Mr. NEILL. I have looked over it hurriedly. I have been out of the city for the past two days and have not had a chance to go over it carefully.

I might say in passing, Mr. Townsend, that I do not think the law that you spoke of as being invoked and declared unconstitutional was declared unconstitutional so far as it applied to arbitration. There was a provision in the bill which made it an offense for any common carrier engaged in interstate commerce to refuse employment to or dismiss any man for membership in a labor organization. Recently the Order of Railway Telegraphers endeavored to organize the men on the Louisville and Nashville Railway. It was alleged that the Louisville and Nashville Railway dismissed telegraphers as rapidly as they discovered that they had joined the organization. At the instance of the railway telegraphers, therefore, an indictment was brought against certain officials of the railway for dismissing employees, and it was that clause of the act that was declared unconstitutional by a Federal court in Kentucky. So far as I know the law has not been invoked as to arbitration—at least in that case the law was not invoked as to arbitration.

Mr. RICHARDSON. When was that?

Mr. NEILL. I think within the last two months. There are still several other cases on trial.

Mr. TOWNSEND. Now, from your experience as Commissioner of Labor, and in other matters relating to labor and labor difficulties, I would like to ask you whether in your opinion a bill providing for an investigation into the matters in controversy is, in your judgment, desirable?

Mr. NEILL. I think it is, Mr. Townsend, with certain restrictions.

Mr. TOWNSEND. I wish you would give us your reasons.

Mr. NEILL. I do not think that there should be any investigation, any compulsory investigation, unless the controversy becomes sufficiently large and sufficiently troublesome to the public as to be a grave menace. I do not think it would be advisable to attempt to interfere in the ordinary strike. I do think that when a strike becomes as grave, as, for example, the Pullman strike became some years ago, or the anthracite strike of 1902, or as would have become a strike if it had occurred last year—if there had been a general strike last spring as was threatened, not only in the anthracite, but in other coal industries, then it would have been probable that within thirty days, and certainly within sixty days, every manufacturing plant in the United States would have been tied up, and if the organization had been able to tie up the coal regions of the country for sixty days, it would have paralyzed every line of industry in the United States.

In case of the anthracite controversy, it became so grave that there was indescribable suffering along the entire coast. It had reached a condition in New York where, if it had not been for the careful management of the mayor and the New York officials, there would have been riot at any moment and the coal bins pillaged; there would have been indescribable conditions throughout New York. When those conditions are reached, it is important that there should be some party who shall step in and do something instead of waiting, and then taking action on the spur of the moment without having the proper machinery. I think it important that there should be some machinery already devised and ready to put in operation without a moment's delay. But I say also that I do not think there should be interference until the strike becomes sufficiently grave to warrant the Federal Government in taking action. When that time does come I think there ought to be machinery in existence, or called into existence, in short order.

Mr. GAINES. Who shall determine when it shall be grave enough to bring this machinery into operation?

Mr. NEILL. Like everything else, that would have to be left to somebody's discretion.

Mr. RICHARDSON. But should there not be some restrictions and limitations upon the power of the bill? Do you believe, after reading this bill, that the only limitations and the only restrictions placed upon it shall be that the controversy must be such as to interfere with the regular movement of commerce?

Mr. NEILL. Between the States?

Mr. RICHARDSON. Of course. Is not that the only restriction in the bill?

Mr. NEILL. Yes; I think it is.

Mr. RICHARDSON. Then you think that there ought to be additional restrictions?

Mr. NEILL. I do not know but that perhaps a single adjective such as the word "seriously" might be used. I don't think, myself, that it would be likely that such an important mechanism would be called into action unless there was a very serious demand for it. I am quite sure that unless the matter was very grave and that the public had undoubted interest in it it would be resented by all parties to the controversy.

Mr. RICHARDSON. But suppose you have a law to go ahead and do it, the resentment would not amount to anything, would it?

Mr. NEILL. What I meant to say was that I did not think anyone would be willing to go against the undoubted opposition of the employer and the employees in interest unless there was public support of the strongest kind.

Mr. MANN. Would it be controlled by the popularity of the claims?

Mr. NEILL. I think that if the general public thought it was not serious enough to warrant Federal interference no President would act, and that he would only act when he had sufficient public sentiment behind him to warrant it.

Mr. CUSHMAN. What would be your individual judgment as to the importance of the teamsters' strike in Chicago? Was that important enough or did it affect interstate commerce enough to warrant Federal interference?

Mr. NEILL. I do not think it did.

Mr. MANN. According to your view, the President ought not to act until the controversy had created a great furore in the country?

Mr. NEILL. Not until conditions had reached such a point that a representative element of public opinion would justify such action. I do not think any President ought, and I do not believe any President would, interfere in an ordinary controversy or until the two sides to the controversy showed no reasonable chance of coming to an agreement themselves.

Mr. MANN. In other words, it would be your judgment that the President should only act in those cases that affect the welfare of a large portion of the country, and not simply where it affected a particular locality?

Mr. NEILL. Undoubtedly. I think the matter is too important and I think the principle at stake is too vital to be invoked too frequently.

Mr. MANN. What would you say about the proposition as to whether there should be a special commission appointed in each case or whether there should already be in existence something in the nature of a national board of arbitration to which the President might refer these cases?

Mr. NEILL. I think there should be in existence certain machinery; that is, I think the mechanism of the commission ought to be ready; and I think, personally, that the personnel of the commission ought to be appointed anew for each particular case. I think, in the first place, it ought to be composed of people who have some knowledge of the particulars of the industry in which the strike has occurred; and, in the second place, if such a commission were once appointed, and it were to pass judgment on some point at issue which one side or the other considered vital to its existence, neither side would ever again agree to that same board any questions at issue without vigorous protest. For example, take the anthracite strike commission; no question involving the open shop could ever be submitted to that commission

again, because they passed judgment upon that. And, furthermore, if the commission made a mistake in the first instance, it would not be inclined to change its verdict. I think the commission would be hampered by that fact if, in the light of insufficient evidence, a verdict was given that later might with propriety have been reversed.

Mr. MANN. Take the question of the open shop. Do you think it ought to be the policy of the National Government to decide in favor of the open shop in one case and in favor of the closed shop in another—to change about just as they happened to be?

Mr. NEILL. I am simply citing that as an instance.

Mr. MANN. But there is a good instance?

Mr. NEILL. Possibly so, but there is this difference between an arbitration commission and a court of law: A court of law has certain definite, well founded, and crystallized principles of law that it follows. But in regard to a labor dispute it represents certain rights, certain demands, in which one body puts faith, claiming that they are rights, legal, constitutional, moral rights. Now, to-day, public sentiment may say: "You have no such rights;" but five or ten years hence public sentiment may come to see that it is an undoubted right. That has been the whole history of democracy.

Mr. CUSHMAN. So far as legal and constitutional rights are concerned, the courts are open to them for their determination, but you think this a question of arbitration to determine a moral right more than a legal or constitutional right.

Mr. NEILL. No; I think that even the questions of constitutional rights or legal rights in labor disputes are still very much unsettled things. There have been decisions in some States that the closed shop is a conspiracy and criminal.

Mr. CUSHMAN. That is true; but can you substitute an arbitration tribunal to take the place of a court of justice to determine those questions?

Mr. NEILL. No; but I say there are certain questions that practically are not settled at all by law, and those questions must go before a body of this kind. In other words, it must pass judgment on questions which are still open to dispute and which the law has not yet formally passed upon.

Mr. TOWNSEND. This is not a question of arbitration anyway.

Mr. NEILL. It comes very close to it. The bill would be without force, without effect, if the opinion of the commission did not amount practically to a coercive verdict. If it simply gave its opinion and no one paid any attention to it, the decision of the commission would be worse than useless.

Mr. RICHARDSON. Would you think, as you have stated just now, that it is a question of such vast importance and magnitude that we ought to leave the law—for instance, the lawmakers ought to leave as little discretion to a man who has to invoke its power as possible? In other words, it ought to be specific, so that the courts would not be allowed to exercise discretion. Make the law plain, and restrict the jurisdiction of the man who has to invoke the law. Do you not believe in that theory?

Mr. NEILL. I don't know whether I do or not. This is a new field, and I think there should not be too much restriction placed there. It will have to be left in the last analysis to somebody's discretion as to

when the power of this organization shall be invoked and when it shall not. If it seems unwise to leave that to anybody's discretion, we had better leave things as they are. I think if it is hedged about with too many restrictions it will become practically useless.

Mr. BURKE. Would you not have two commissions working at the same time that might have the same questions before them, to some extent, to pass upon, and one might hold one way and one the other?

Mr. NEILL. No; I do not think we would have two large strikes at the same time. We have never had in our experience before, and I do not think we will.

Mr. RUSSELL. You stated a while ago that you thought the commission would be useless unless it had coercive power. Upon what would you rest the coercive force?

Mr. NEILL. Public opinion.

Mr. STEVENS. That would lie largely in the justice of the decision.

Mr. NEILL. There is no question but the anthracite coal commission was forced upon the operators against their will, because of the formation of a public sentiment that had coercive force behind it.

Mr. RUSSELL. You didn't mean that the law should contain sufficient machinery to put the decision in effect?

Mr. NEILL. Oh, no.

Mr. ESCH. Unless you have a standing committee, would not a good deal of time be lost in the appointment and selection of separate committees? Are not cases arising where there is great emergency, great need of hasty action?

Mr. NEILL. No; I think no strike could develop to the point of becoming a public menace except by successive steps. For example, we were all very much concerned because of the likelihood of a general coal strike last spring. Those things are always known a considerable time in advance. You can figure out the possible developments and results, and I think that we could be quite prepared, could have all the mechanism ready to launch at a given moment. We would have known weeks in advance what the trend was, and it would be entirely possible before the results became disastrous to have the commission appointed and ready to go to work. I think there should be some prominent official, not a member, connected with the commission who would look after the *modus operandi* and who would be familiar with precedents and traditions.

Mr. CUSHMAN. Let me ask you whether it is your idea that the arbitration machinery be provided to settle a controversy that could be settled by law, or only to reach that part of the controversy which could not be settled in court?

Mr. NEILL. Practically, Mr. Cushman, no industrial controversy can be settled by law. The question is one that you can not get before the courts. For example, there is no question of wages, hours of labor, or condition of life that can be brought before any court. They are questions rather of fair dealing and of justice, which have not yet been brought within the realm of judicial inquiry or decision.

Mr. MANN. You spoke of the teamsters' strike in Chicago as one that would not be of sufficient importance in your judgment to be brought before a commission for settlement. As a matter of fact, both sides to that controversy, at different times, did endeavor to influence the President of the United States, and it is quite certain

that had such a law been in operation he would have been asked to appoint a commission. Would he have been able, would any President be able to resist a request under such conditions? Would it not enter into politics right away? It being a matter of discretion, and in case of trouble to commerce, which might happen anywhere, how could he help himself?

Mr. NEILL. I know a good deal of the inside history of that teamsters' strike, and also the efforts made to interest the Federal Administration, and I do not think that any President, even with this bill in operation, would have done any more than the President did in that particular case.

Mr. MANN. I do not believe that a man was ever elected President who would not have yielded.

Mr. NEILL. I do not believe that any Federal action would have been taken. It never got beyond the limits of Chicago; it never reached a point where it was beyond the control of the city of Chicago or the State of Illinois, so far as I know.

Mr. BURKE. I know that it affected the region beyond Chicago.

Mr. NEILL. It may have undoubtedly inconvenienced purchasers in other States to some extent.

Mr. CUSHMAN. I think they rioted through the city for about a hundred days.

Mr. NEILL. Yes; but this bill would not have enabled the Federal Government to check the rioting. If the case should be investigated the commission would be sitting a couple of months.

Mr. RUSSELL. Do you not think that the tendency of legislation of this sort would be to create a demand for such an amendment to this law, if it were enacted, as to give some coercive effect in law to decisions of the commission? Suppose you have a situation like the Chicago strike—the people become excited and riotous, and the commission is asked to act, pronounces judgment, and neither side yields. Don't you think that the public would demand some amendment to this legislation to put in effect the decision of the commission?

Mr. NEILL. No; I think that public sentiment would be sufficient without anything further. As to the Chicago strike, I think that if the inside facts of it on both sides could have been made public it would have collapsed.

Mr. RUSSELL. That would have put in effect the judgment of the commission; but in case of a desperate controversy, where neither party would yield, that reason would have failed.

Mr. NEILL. If the decision of the commission were one that left the case largely open, so that public sentiment could not crystallize on either side, there would not be anything but to let it go on; but if, as is ordinarily the case, the matter would be considerably one-sided, I think that public sentiment would crystallize materially; and if it could be shown that both sides were in the wrong, or both sides had certain rights, I think public sentiment would then certainly compel a compromise.

Mr. RUSSELL. You do not think that there is in this legislation which would lead ultimately to the enactment of a law empowering the courts to give coercive effect to the judgment of the commission?

Mr. NEILL. If I thought that, I should not feel that such a law would be at all advisable.

Mr. ESCH. Might not the decision of this commission result in legislation? According to one provision of the bill it may recommend such legislation as the facts may seem to require.

Mr. NEILL. It might be. But unless such recommendations were needed, undoubtedly needed, I do not think the public would be willing to have legislation. This is a very delicate field of operations. It is one in which it is very easy to trench on rights which are not yet sufficiently clear to be made the subject of legislative or judicial declaration. I think that there are certain claims being put forward as to rights which have not yet been generally accepted. Within ten years they may be accepted universally.

Now, I think until public sentiment has had time to digest these various claims of rights and reach some decision it would be very unwise to either have legislative or judicial declaration upon what the limits of these rights are. In fact it is a struggle between certain moral and ethical claims which ought not to be passed upon legislatively or judicially until they have been threshed out much further than they have yet been. I think, however, that an organization of this kind would tend to clear the atmosphere very much by giving the public the real inside facts. You have here, say, a controversy in which both sides put forward special pleas, and I might say, to be perfectly frank, that I think the employers' side generally has the advantage in getting a hearing before the public. The labor organizations put forth their pleas and claims through their own papers, their own organs, which do not reach the public. They are read by those who are members of the organization already, by a clientele, so to speak, who subscribe to a certain faith and are only confirmed in what they already believe.

The employers' side of the controversy is usually presented through the periodicals and daily press, so they have the advantage, therefore, of molding and shaping public opinion. And further than that, the acts and the views of the labor organizations have to be done publicly, while the acts of the other side are not done in public, and the public has no way of getting at the facts.

Now, I think that this bill would be in the interest of fairness. It would give the opportunity of forcing both sides to show up the actual things that were being done, and the actual merits of their claims. And I think that would go a long way toward bringing about industrial peace in a way that has not been suggested at all—that is, I think that unless an organization either of employees or employers had a very strong case, and one that they were perfectly willing should be made public, they would not indulge in a prolonged controversy that would invite too much attention from the public.

Mr. ESCH. Would there be any danger in one party putting in part of its case, or not appearing at all?

Mr. NEILL. The commission would have the power to go into the books connected with the affairs of those involved in the controversy, and also have the power to compel the attendance of witnesses, and the production of books and papers.

Mr. RICHARDSON. I think your views on that line are very good, but the trouble in my mind is that you put too much power into the hands of one man, and you do not limit the necessities under which he shall act. I do not like to see that much power put in any one man's hands.

Mr. NEILL. As I understand it, his power would simply be the appointment of the commission; but that, however, would undoubtedly be a very great power; and, as suggested a moment ago, if politics entered into the matter, and if a commission were once appointed with a bias for the purpose of deciding a case, the usefulness of the whole mechanism would end.

Mr. RICHARDSON. Isn't it a fact that according to this bill the interruption of interstate commerce shall, not only in the estimation of the President or in his discretion, actually take place, but if even threatened or menaced he can invoke this commission; and even when there is a menace or threat that something may result in the future?

Mr. TOWNSEND. The bill provides for that.

Mr. NEILL. Now let us cite again a case which is recent. I think that if the coal strike had started last spring, and that a very large per cent of the anthracite and bituminous miners had gone on a strike, that it would have been necessary to put in force this commission immediately.

Mr. RICHARDSON. You are dealing with coal strikes and things of that kind, but this bill is not restricted to that; not at all.

Mr. NEILL. I simply say that in some cases were there a strike threatened the results might come out rapidly, and be so far reaching that it would be necessary to start the commission to work on the certain prospect of danger rather than to wait for the danger to become actual and disastrous.

Mr. RICHARDSON. What I object to, so far as I have investigated, is in restricting the power which is given in this bill.

Mr. NEILL. Of course that is a question of public policy that I am not familiar enough with to answer. I do not feel that I am competent to give the committee a suggestion or advice upon that.

Mr. TOWNSEND. Right in this connection, can you tell whether or not strikes are on the increase?

Mr. NEILL. We are at present making an investigation which will bring the history of strikes and lockouts down to the end of the year 1905, but the work is not yet completed. However, so far as we have gone, we are able to make a rough estimate and I think that in the early part of this century—that is, 1900, 1901, and 1902—they were very largely increased over previous years, though they have not been as numerous in the last few years. But I think that the last five years have averaged a much larger number of strikes than any previous period of five years.

Mr. MANN. Proportioned as to the actual number, or in proportion to the number of people employed?

Mr. NEILL. I don't know; our figures are not sufficiently far along to show that. That would be the only test, undoubtedly. But as a matter of fact I believe that it would be shown that on account of combinations the strikes are to-day larger in numbers. Formerly, for example, we might have a strike in a single plant, while to-day, with the combinations, that strike would extend to a number of other plants that might not formerly have been involved.

Mr. RYAN. Are strikes more numerous during times of prosperity or in bad times?

Mr. NEILL. That it hard to say. I should say that at times of industrial change, either way, they are numerous; that is, when prosperity comes wages do not go up as rapidly as do the profits, and there is a

tendency therefore on the part of labor organizations to strike to secure more rapid increase of wages. At the same time when there is ebbing prosperity, wages are cut promptly, and there is usually a strike against the reduction. So when we are on the up-grade and down-grade they are equally numerous. When the condition is permanently one of prosperity over a considerable time, they are not so likely to be numerous.

The CHAIRMAN. Before you pass from the discussion of the commission, I would like to ask your opinion as to this view: Would it be desirable to appoint—this bill provides for a commission of seven persons for the purpose of having the machinery always ready for early action—would it be desirable to have a portion of that commission permanent, say, three persons, with the power on the part of the President to fill it up for the purpose of examining an immediate case; would there be any advantage in such an arrangement?

Mr. NEILL. I think, Mr. Chairman, as I said a moment ago, that it would not be wise to have any part of the commission permanent, but I do think that the mechanism ought to be permanent, and I think that if some official of the Government—and I say this of course without wishing to direct attention to myself—the Commissioner of Labor should be made the permanent secretary and the keeper of the records, so that the machinery could be all ready the moment the commission was appointed.

The mode of procedure then would be more clear, as the first experience of such an official would be valuable. I do not think that he ought to be a member of the commission, but I think he should be an official of the commission without the power of vote. I am inclined to think, however—for example, my own experience on the anthracite commission has shown me that if a commission of that kind were appointed it could get to work and avoid much delay and some mistakes—that is, that the method of work would be much better if some of the attachés of that commission were attached to a new commission. I think the appointment of the Commissioner of Labor as permanent secretary, and give him permission to use the force of the Bureau in doing investigating for the commission would be a good thing, but I do not think he should be a member of the commission.

Mr. TOWNSEND. Right in that connection, what would you say as to whether there should be some provision in the bill providing that each party to the controversy, or some one thoroughly familiar with the particular questions at issue on each side, should be made members of the commission?

Mr. NEILL. I think that would be an excellent proposition. I think there ought to be a provision in the bill that the President should invite each party to the controversy to select one member of the commission, and if there was a commission of five, let the President appoint five and give each side the option of appointing an additional member, or at least in some form naming the men. I state that for this reason: After all the testimony is taken, if you have five or six men not familiar with the technique of the business, there will undoubtedly come up questions for settlement which the commission does not understand, and there should be somebody on the commission thoroughly familiar with the technicalities and details of the business, both from the employer's side and the side of the organization that is conducting the strike. I think that is very important.

Mr. MANN. That would practically give each side an attorney on the commission.

Mr. NEILL. I think it might be well to provide that the members should not be lawyers, and that they should not be directly interested in the strike. What I mean is, that there ought to be a man who has complete knowledge of all the technical details of the business.

Mr. ADAMSON. It seems to me that it would be a great deal better if they could be lawyers. But I suppose you mean they should not act as advocates in the case?

Mr. NEILL. But the lawyer does not know the technique of the business. Of course I do not make any reflection on the ability or fairness of lawyers, but if it is a railroad strike, for example—say a strike of switchmen—I think there should be a man upon the commission who is himself, or has been, a switchman; a man who has been a railroad man and knows accurately the whole question of switching from the railroad side.

Mr. ADAMSON. Of course, you do not think that a man would necessarily be dishonest or biased because he is a lawyer and understands the subject?

Mr. NEILL. I think each side would have undoubted bias.

Mr. MANN. If a man be appointed with the special purpose of representing either side, universally he considers himself a practical advocate of that side; he is the attorney for that side with the commission.

Mr. ADAMSON. I understand you propose to appoint a man on account of his fitness and for the reason that he knows the things about that side, and not because he is a partisan of that side?

Mr. NEILL. I think, as a matter of fact, that anyone appointed on a commission of that kind would endeavor, so far as he could, to set aside all bias and act in a judicial capacity rather than in the capacity of an advocate; but I admit also that he would undoubtedly have bias, but that would be slight when you consider that there would be five other men in a neutral position. My idea is that there should be opportunity for complete explanations of technical points during the sessions of certain things on which it was necessary to get further information. Of course the getting of the information could not be attended as it was originally, with the right of cross-examination and challenge of statement. But if there could be a man on each side to explain matters of technique, and explain it correctly, the representative of the other side could challenge the explanation. I think that is important, for the absence of that would cause a liability of serious error in the findings of the commission, due to ignorance.

Mr. ADAMSON. A railroad man is selected for the reason that he is skilled in the particular knowledge affecting the railroad, but it is not implied thereby that he is going in there solely to help the interests of the railroad, but to impart to the others his knowledge of railroads?

Mr. MANN. That might be true, but if he is selected by the railroads then he goes in as a special representative of the railroads.

Mr. KENNEDY. Would not they see before selecting him that he would represent the railroads?

Mr. ADAMSON. If they are going to hire a lawyer to advocate their interests in the controversy, that is a different question.

Mr. CUSHMAN. Mr. Neill's idea is that in a controversy of this character there should be two men appointed who have particular knowl-

edge of the subject, one from the standpoint of labor, and the other from the standpoint of the employer. Then if there was any bias on the part of the two individuals, they would offset each other, and that the controversy, in reality, would be decided by the other five men.

Mr. NEILL. Unquestionably. The attorney would be in this embarrassing position, that he would either have to sign the report or dissent from it. And he would be in a very embarrassing position if he wrote a dissenting opinion against the other six members of the commission, he would have to appear as advocate, and his reasoning would show him a special pleader. On the other hand if he signed the report, then he was, himself, brought to agreement with the other six, and the report would have added weight, because a man knowing that side of the case, and naturally supposed to be a man of bias, had signed the report.

The CHAIRMAN. Would you have the respective parties represented by counsel in these investigations?

Mr. NEILL. I think they ought to be given that privilege if they wish.

The CHAIRMAN. Would you think that necessary?

Mr. NEILL. Yes; I think it is. I have known some cases in which it was unwise, as it turned out, and where the case could have been better presented by the parties themselves; but I think they undoubtedly should be given the right to be represented by counsel.

The CHAIRMAN. Would representation by counsel retard or expedite the investigation?

Mr. NEILL. I think it would retard the investigation.

Mr. MANN. I would like to ask if in the coal strike the witnesses were paid by the parties or by the Government.

Mr. NEILL. They were paid by the parties.

Mr. MANN. Would you have that in this law if it should go into effect?

Mr. NEILL. No; the expense should be paid by the Government. There was undoubted hardship on the miners in the case of the anthracite investigation. At Philadelphia they had to bring large numbers of men from Scranton and keep them there an indefinite time, not knowing when they would be called.

Mr. CUSHMAN. Here is a provision in the bill, as follows: "All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders in making any investigation under this act, shall be allowed and paid on the presentation of itemized vouchers therefor, approved by the chairman of the commission and the Secretary of the Interior." That is the latter part of section 10.

Mr. ESCH. Strikes, as a rule, have geographic limitations. Would it be your idea that the commissioners should be appointed within a circle of influence, or outside of it?

Mr. NEILL. No; I think it should be left without any respect to geographic limitations; as a matter of fact, it might be advisable in some cases, if the matter has become one of too great heat in a community, to select arbitrators outside of the community.

Mr. ESCH. If you had a permanent commission that might not be possible?

Mr. NEILL. No; I think a permanent commission is most inadvisable; I think it would do more harm than good.

The CHAIRMAN. Should the bill recognize the right of challenge to any member of the commission?

Mr. NEILL. No, I think not. I think that would be an undoubted right that a man should have in one sense, but on the other hand it would almost paralyze the work of the commission. If it took proportionately as long to get a commission as it ordinarily does to get a jury in a very important case, there probably would be nobody left to draw upon.

Mr. RUSSELL. Did I understand you to say, in answer to a question of the chairman, that in your judgment the employment of counsel would retard the investigation?

Mr. NEILL. I think so; but yet I think the right to be represented is more important than rapidity in reaching a decision.

Mr. ADAMSON. I am much concerned to know how any question of public interest, involving the cause of justice, would be retarded by representation by counsel.

Mr. NEILL. Instinctively the lawyer becomes more technical and fights more on technical points than the parties at issue would. I think there would be much argument, and I think undoubtedly the work would be retarded.

Mr. ADAMSON. I suppose that opinion is based upon your idea of the practices common with lawyers in a case. But you do not propose, in this country under our institutions, to set up any investigation that could be expected to receive the respect of anybody if it carried with it the idea that a man should not be represented by counsel and that he should not have witnesses to represent his interests.

Mr. NEILL. As I said a moment ago, I would not have a man deprived of that right; but I was asked if that would facilitate or retard the work, and, based upon experience that I have had, I stated that it would undoubtedly retard the work.

Mr. RICHARDSON. Isn't it a fact that in most of the States of the Union where they appoint railroad commissions that provision is made so that one shall be a lawyer, another a railroad man, and so on? They do not object to lawyers on these commissions.

Mr. NEILL. No. I am speaking of parties to a controversy being represented by lawyers.

Mr. RICHARDSON. I understand. You think it retards the business, and then you take the position further that you seriously question whether there ought to be the right, in this bill, to challenge one of these commissioners. That makes it arbitrary, for if a prejudiced man gets on the commission, and the labor organizations want to show that and that he is committed in his views, you do not think they should have the right of challenge?

Mr. NEILL. No; I think in the formation of the commission that nobody would be appointed by whoever has the power of appointment unless they were men standing before the public as men whose intelligence and fairness would be unquestioned; but at the same time I haven't the least doubt that if there is a right of challenge, practically every one of them would be challenged.

Mr. MANN. I suppose you take the position that if the commission was not fairly appointed their opinion would have no weight?

Mr. NEILL. Unquestionably; therefore the appointing officer would select men of such character that if a protest was lodged it would carry no weight before the public, because the men would have such stand-

ing of intelligence and fairness that the protest would be considered a biased attempt to have them put off and the prejudiced men put on.

Mr. ADAMSON. A commission could only inquire around, form an opinion and give it; that is, so far as the matter of inquiry goes.

Mr. NEILL. That is vital. They might make inquiries, but if they wanted to enforce those inquiries to the point where they could get what they wanted—

Mr. MANN. Supposing there should be a strike on the part of the employees of the sugar trust, the employees of the refineries over in New York, and by reason of that strike a commission was appointed and an investigation undertaken of the books and methods of business in the sugar refineries, do you think that the commission would have constitutional authority to—

Mr. NEILL. I could not discuss that from a constitutional standpoint, because I am not a lawyer.

Mr. MANN. In one case it was held by the Supreme Court that they could not do that.

Mr. NEILL. I do think, as a matter of fairness—and I don't know whether this is constitutional or not—but I do think that where a protective tariff is levied for the explicit and the practically stated purposes of maintaining wages that the Federal Government, in case of a strike in a protected industry, should have the right to go in there and see whether the tax collected from the public is being properly distributed as wages or whether it is almost entirely held out as profit.

Mr. ADAMSON. And if a man is not making enough money, feed him from the public treasury?

Mr. NEILL. That is not the point. It is simply this: When the cry is made that there should be no investigation of this matter, as I understand the matter, the purpose of the protective tariff is to maintain wages in a high standard of living. I do think, if that is the purpose, that when a strike as to wages occurs there should be power further to go in and find out whether the men who have collected the tax are distributing it as intended by the law.

Mr. CUSHMAN. Wouldn't it occur, if any person or organization were engaged in a certain business and making more profits out of it than it should from an ethical standpoint, that that would offer a very flattering invitation to other men to go into that business?

Mr. NEILL. Only as a matter of fairness. I feel strongly on that point.

Mr. MANN. Do you think that the Government ought to be permitted to go in and investigate any corporation, find out what it is making, the amount of profit, the whole business?

Mr. NEILL. I do not say that; but I do say that if the wage they are paying is so low as to bring about a controversy—I wouldn't have this done excepting in cases of strikes that become of moment to the public—but I say when the public is gravely inconvenienced by a strike and by a demand on the part of wage-earners that their wages are not high enough, and when they feel strong enough to carry the fight before the public, then I believe the public has a certain right to go in and say "We want to know whether you are paying all that is proper in this case or whether you are getting the benefits of protection, and at the same time reaping exorbitant profits."

Mr. MANN. If you have to do that in cases that involve a million people, would you refuse it in the case of one?

Mr. NEILL. Unquestionably.

Mr. MANN. Is it numbers that make right?

Mr. NEILL. I wouldn't accept that as a general proposition. But, for example, I think if any individual man chooses to cease speaking to me on the street or does not care for my custom in a store he has that undoubted right, and the Government would say "You are so slightly inconvenienced that we will not put the machinery in operation." But if the whole community is striving to make my life a burden by doing the same thing I think I would have a right to appeal for protection. I think in all of these matters that the question is largely one of the degree of inconvenience or of sufficient curbing of his rights to warrant the governmental machinery taking notice.

Mr. MANN. You are speaking of governmental machinery without differentiating at all between the local machinery and the national governmental machinery. The question is, How far the National Government should have a right to go into a question that is purely local, excepting as it may affect the shipment of products out of a State?

Mr. NEILL. I should certainly say that the National Government should not take action on as small provocation as would be noticed by the local government. I think the matter ought to be of importance before the National Government should start its machinery in motion.

Mr. BARTLETT. It is a matter of power and right.

Mr. RICHARDSON. As I understand it, under this bill you would inquire into the protection afforded by the tariff; that such inquiry should be made under this bill?

Mr. NEILL. Oh, no.

Mr. RICHARDSON. What was it, then, that you said?

Mr. NEILL. Simply the question of inquiring into the profits when a demand for higher wages precipitates a strike that seriously affects the public.

Mr. RICHARDSON. As to that question, do you not think that in order to find out what the real profits of labor were that you could go a step further and inquire whether the profits of labor are not affected by selling the products of these manufactories of the United States at a smaller price in foreign countries than at home?

Mr. NEILL. Oh, no; I would hardly go so far as to—

Mr. RICHARDSON. But you would not go into that?

Mr. NEILL. No; I should not think that they would have any right to go further than to find out in cases of strikes whether the wage paid was one that was justified by the industry, or whether it was one entirely inadequate.

Mr. ADAMSON. To see whether eleemosynary institutions were properly dividing the swag?

Mr. NEILL. I don't agree to that method of stating it.

Mr. TOWNSEND. Mr. Neill, is it a fact or not, in your knowledge, that the Bureau of Manufactures, or other departments of the Department of Commerce and Labor, are doing practically the same thing as we seek to do here—namely, inquire into the conditions of business?

Mr. NEILL. Well, I do not know enough, Mr. Townsend, about the actual work of the Bureau of Corporations to make the comparison.

Mr. ADAMSON. Seriously now, do you not think that after a few parties, a few interests, had received the opinions or judgments of this commission in their own favor and which were not observed by the other side that they would verify my apprehension and begin to think that the law ought to be amended so as to enforce their findings?

Mr. NEILL. I think that if this bill were to become a law the contrary would be the effect. I think that after one or two investigations and publication of the facts that strikes would not go to the extent that they do at present.

Mr. ADAMSON. Suppose that the opinions were not observed by the ruling parties.

Mr. NEILL. I can not assume that. I believe they would be. I can not assume that they would not be.

Mr. ADAMSON. But you know sometimes public clamor is not right.

Mr. NEILL. We have seen the force of public sentiment in the insurance cases, and in other cases, and I think public sentiment in matters of this kind would be sufficiently strong, as strong as a jury sentence and a court verdict. And further than that I believe that if both sides thought that this power existed and would be undoubtedly enforced, unless they had an absolutely just cause, and one which they had not the slightest objection to being ventilated before the public, I do not believe it would be permitted to get as far as a strike.

Mr. MANN. Do you believe in compulsory arbitration?

Mr. NEILL. Absolutely not.

Mr. MANN. Do you not believe that this would be, in effect, compulsory arbitration through public sentiment?

Mr. NEILL. Perhaps so, but I do not believe we should take a man—you can not compel labor to work unless you put them in jail and bring coercion to bear on them; but, on the other hand, if the decision of the commission was a fair one, it would be simply the decision of public opinion that these men should live rightly and decently.

Mr. MANN. What, in your judgment, has been the effect of compulsory arbitration?

Mr. NEILL. I do not know enough about that. It has been warmly discussed from both sides, and I have read and heard those who claimed that it is a flat failure, and also those who have claimed that it is a success.

Mr. MANN. That is the reason I wanted your opinion.

Mr. NEILL. I try to be rather conservative in my opinions, Mr. Mann.

Mr. ESCH. What do you think the result of administration under this bill would be? Do you think it would result in decreasing the strikes?

Mr. NEILL. No. There is not one strike in a thousand to which this would apply. I think it would result in the reduction of these enormous strikes that become of serious concern to the community, but the average strike would not be affected by it at all.

Mr. ESCH. Wouldn't the effect of a decision of this commission on a great strike be used as a precedent in the adjustment of smaller strikes?

Mr. NEILL. Oh, yes; that is undoubtedly true, after the decision once got into effect. If that same principle came up again and became the issue it would undoubtedly help to hasten the settlement of the

strike, or probably prevent it, because of the fact that it went against the decision. The decision would have the effect of supplying a strong need.

The CHAIRMAN. On this matter of compulsory arbitration, you say that this method under this law would be, in effect, compulsory arbitration through pressure of public opinion. Now, as a rule, the law is simply crystallized public opinion. Why would you not invoke it then as an expression of public opinion?

Mr. NEILL. While the law is undoubtedly an expression of public opinion, the law often has difficulty in being applied with justice in each individual case in the present state of our views.

In regard to these questions of labor disputes, I think there are many claims that are being put forward as rights of labor organizations, as their undoubted rights, which are denied and resisted as not being their rights at all, and which I believe in the course of time will be just as much accepted as rights as the commonplace rights of to-day. Holding that view, I believe this is a transitional stage when the question of rights is being gradually evolved. I would not like to see a law passed that a court should have the right, or anyone making the application of that law, to take any man and coerce him by law, on either side, to do something he didn't want to do.

If he felt that the decision of the commission was an injustice and that public sentiment would support him, he could very easily refuse to abide by the decision; but if public sentiment did support the commission's award, he would have to bow to it even if he thought it to have been wrong. On the other hand, if the award were wrong, and even contrary to public opinion, he would nevertheless be coerced by the power of the law and fined or sent to jail. I think there would be a great deal of difference in setting in effect a public opinion that I am free to resist and setting into effect the powers of the law which, no matter what I think, are going to lodge me in jail or fine me.

Mr. MANN. I don't understand that the law goes to the extent that you say at all.

The CHAIRMAN. I am not in favor of compulsory arbitration, and I want to have a reason to justify myself in that opinion, but I am not entirely satisfied with your explanation thus far. I have heard it often said that there was no way of enforcing it, and the illustration has often been made of how you could enforce it against the laboring man. These commissions are not, as a rule, against the individual, but against the organization. They have always got the power over one side through the dissolution of that organization. The court has power that far. It does not seem to me that the argument of absence of power to enforce a decree of arbitration is the correct one. There is a means, in my judgment.

Mr. NEILL. Suppose you dissolve the organization. In the first place, it has no corporate, and, I suppose, no legal, existence.

The CHAIRMAN. Oh, yes; it has a legal existence undoubtedly.

Mr. NEILL. It has no corporate existence. If you forbid them to maintain their organization, and they persisted in maintaining it secretly, what punishment could then be inflicted?

The CHAIRMAN. The same punishment as that inflicted in disobeying the decree of a court.

Mr. NEILL. That would have to be fine or imprisonment. My objection to that is this: I think it desirable that labor organizations

should conduct their business as publicly as possible, and I think any coercive measures that would drive them into secret methods, secret organization, would be not only harmful to their interests, but detrimental to the public interests.

The CHAIRMAN. I think that very great good could be accomplished by some such statute as this, but I do not want to be understood by the interrogatories that I have put to you as being in favor of going to the other extreme. I did want, however, to make a suggestion with regard to the objection that is so often heard, that there is nothing for a decree or a judgment to operate upon.

Thereupon, at 12 o'clock noon, the committee adjourned.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Tuesday, January 15, 1907.

The committee met this day at 10.45 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. Mr. Townsend, have you any line of procedure that you would prefer to follow in the hearing this morning?

Mr. TOWNSEND. I have followed the suggestions of the committee and of various members of the committee when we had the meeting heretofore, and invited a great many manufacturing organizations of the country, and also advised Mr. Adams; Professor Clark, of Columbia University; Mr. Lowe, and a number of those people, together with the various labor organizations of the country, that the hearing had been postponed until to-day. Some of them wrote that they would be glad to be here. Others wrote that they wanted to consider the question. Some of them have written out their opinions in regard to the matter and made statements in writing.

I see Mr. Fuller is here. I do not know whether he represents any labor organizations on this question or not, or whether any of the other gentlemen present are to be heard on the bill.

STATEMENT OF MR. H. R. FULLER, LEGISLATIVE REPRESENTATIVE OF THE BROTHERHOODS OF LOCOMOTIVE ENGINEERS, TRAINMEN, AND FIREMEN, AND OF THE ORDER OF RAILWAY CONDUCTORS.

Mr. FULLER. I would say, Mr. Chairman and Mr. Townsend, that I represent the brotherhoods and employees, but we have not taken any proceedings in this matter, and therefore I do not want to have anything to say in regard to it.

Mr. STEVENS. You think your people are covered by the other legislation—the arbitration act, passed some years ago?

Mr. BARTLETT. The Phillips Act?

Mr. FULLER. We have simply not taken any position on this particular bill.

The CHAIRMAN. Have those organizations been advised by you, Mr. Fuller, that this legislation is pending?

Mr. FULLER. Yes, sir; and I understand they have been advised by Mr. Townsend also.

Mr. RICHARDSON. That would indicate, then, that they have no objection to it?

Mr. FULLER. If you will excuse me, I will state that the executive heads of the organizations which I represent are very busily engaged now, as you doubtless all know, with the wage question in the western country, and it is a very hard matter for them to get into another subject at the same time. They have been acquainted with the fact that this bill had been introduced and that hearings will be held upon it.

Mr. MANN. Would they want to submit their side of the wage question to a commission appointed by the President, or do they prefer to make that contest themselves?

Mr. FULLER. Well, Mr. Chairman and Mr. Mann, I would not care to go into any discussion of the matter at all.

Mr. KENNEDY. I suppose, Mr. Fuller, unless the unions you represent act upon the matter pending, you are not authorized to take any position yourself, independent of their instructions, are you?

Mr. FULLER. Well, I am; yes; if I thought proper.

Mr. RICHARDSON. I thought, Mr. Fuller, that you were acting in a representative capacity for your organizations here, and that you advise them what you think. Do you not?

Mr. FULLER. Of course I express my opinions as to legislation; yes.

The CHAIRMAN. Mr. Fuller, I want to ask you: You represent, as I understand it, four labor organizations, national in their character?

Mr. FULLER. Yes, sir.

The CHAIRMAN. Now, have you informed those organizations of this pending legislation, so that they are informed that the matter is pending here?

Mr. FULLER. Yes; I have already stated that I had.

Mr. RICHARDSON. Have you given them an opinion—if I have the right to ask—about this?

Mr. FULLER. I have. If you gentlemen will excuse me, if we are going to take any position on the bill, we will express it; but unless we do that, I do not care to have anything to say.

Mr. TOWNSEND. I would say, Mr. Chairman, that what I know about this matter, as correspondence has revealed it to me, is that I have heard of no open opposition to it. A great many of the manufacturers' associations have written me letters inquiring about the bill and asking for copies of the bill, which I have sent them, and the general question has been all along the line, "Will this bill be liable to interfere with a sort of private corporation matter? For instance, if a strike on a small scale should occur in the establishment of some individual manufacturer or producer somewhere, would the Government be liable to interfere?" I have answered in every instance that it was not the intention of the bill, and that it undoubtedly would never be invoked in cases of that kind.

Mr. RICHARDSON. How do you account for this language, then:

That whenever within any State or States, Territory or Territories of the United States a controversy concerning wages, hours of labor, or conditions of employment shall arise between an employer being an individual, partnership, association, corporation, or other combination, and the employees," etc.?

That is the controlling feature of it.

Mr. TOWNSEND. Where it interferes with some Federal rights, where it assumes the magnitude of interfering with interstate commerce so as to affect disastrously the people. No President or commission would ever interfere otherwise.

Mr. RICHARDSON. I do not know of any business that does not enter into interstate commerce in one way or another.

Mr. MANN. What was the case upon which Mr. Neill recently went off to Texas to adjust relations between employees and employers? Don't you think that was a case of that kind?

Mr. TOWNSEND. No; I do not.

Mr. MANN. Not imputing ignorance at all to anybody, here is a matter which Mr. Townsend does not know as yet. Mr. Neill has left the capital and gone out on that case.

Mr. TOWNSEND. If Mr. Neill has gone to Texas or anywhere else, he has gone there at the invitation of the parties. I do not believe he volunteered to go down there, anything of the kind.

Mr. MANN. I am not criticising him, although I have no doubt if a law like this were passed he would have had a commission appointed for that very case.

Mr. TOWNSEND. The very usefulness of the commission itself would depend upon its being called into being only in extreme cases. If it were to be used on any other occasions, it would fail of the purpose for which it would be created, because it is not compulsory arbitration, but a compulsory investigation, and the result of that investigation would be desirable and important only as the need of it was demanded.

Mr. STEVENS. That is not the difficulty.

Mr. MANN. Every case is important in its own locality.

Mr. STEVENS. The difficulty is that where the machinery is at hand and a controversy arises the fellow who is getting the worst of it is going to invoke this machinery; and you are always liable to have officials, the president in charge or the subordinate officials, who can be worked upon in various ways, and it becomes a matter of opinion in such cases whether it is a matter of sufficient importance to warrant the use of that machinery; and where the machinery exists there is always this liability to take advantage of it and make further trouble.

Mr. RICHARDSON. Now, Mr. Townsend, it does not seem to me that you have made any provision in this bill where a man is appointed as an arbitrator to challenge him as being a man having a preconceived opinion of the subject at issue.

Mr. TOWNSEND. I do not think there ought to be.

The CHAIRMAN. We are getting away, gentlemen, from the discussion of the question of procedure under this hearing and going into the merits of the bill itself.

Mr. MANN. We are to have hearings?

The CHAIRMAN. Yes; we are to have hearings, and I simply suggested to Mr. Townsend that we were ready, and I asked him if he had any method of procedure in his mind that he wanted to follow.

Mr. TOWNSEND. I have some documents here. I expected the witnesses themselves to be here; at least they were notified to be here, and if they had a desire to be here they would have appeared, and no mistake.

The CHAIRMAN. Have you been in communication with the employers' associations? Have they been notified?

Mr. TOWNSEND. Yes. We have one representative here, Mr. Smith, representing the Michigan Manufacturers' Association. Mr. Smith, have you anything to say?

**STATEMENT OF MR. HAL SMITH, OF DETROIT, MICH., COUNSEL
FOR THE MICHIGAN MANUFACTURERS' ASSOCIATION.**

Mr. SMITH. Mr. Chairman and gentlemen of the committee, I represent the Michigan Manufacturers' Association. My associates and myself appeared here in connection with the demurrage matter which has just been discussed. We learned of this particular matter before Christmas, and we had some discussion upon it. I do not know that I can better state the attitude of the manufacturers of Michigan than to say that they deprecate in a general way any movement that will permit the Government to inspect the books and property of a private corporation. Whether or not this bill as it now stands would permit that or not, we were unable to agree. We were conscious of the objections just mentioned by the gentleman at my left [Mr. Stevens] when he said that the under dog would perhaps appeal to the Government for the appointment of this commission, but we are, as Mr. Townsend has stated, quite firm in the belief that, so far as private manufacturers are concerned, this action would probably be but very rarely invoked so that their business would be interfered with.

I was present at the conference of the National Manufacturers' Association, where the matter was discussed by their executive officers. I understand that Mr. Townsend has later information as to their attitude. However, at that time they took the general position that if the bill could be limited in its first clauses so that it would be perfectly clear that a private corporation could not be interfered with, there would be no objection. However, we think we would object if we believed that it could be invoked in case a strike occurred in a plant that hindered the shipment of a carload of our goods across the border line of our State to another State, because we think if that situation were brought about the Government could, under the terms of this bill, send a commission to look into our books. I think in that case we would object.

Mr. MANN. With the knowledge that the Bureau of Corporations people in the Department of Commerce and Labor believe that all private corporations should be under their control to the extent of making full reports as to their business, with the knowledge that the Committee on the Judiciary has already reported into the House and has now on the House Calendar a bill requiring all corporations doing an interstate-commerce business to make full reports to the Bureau of Corporations, do you think it likely, that being apparently the policy of the executive and of the legislative branches of the Government, that if this power were conferred upon them it would not be exercised?

Mr. SMITH. I think it would be exercised if you would construe the provision with reference to interstate commerce to mean that there could be interference with some particular goods started in interstate commerce. If that clause covers that, I think it would be exercised, and that is our feeling. But we are not entirely clear as to whether a strike that would prevent the starting of an interstate shipment out of our factories would authorize the interference of the commission. We have talked over that considerably, and I confess that we fear if our plants were shut down and we were engaged in shipping goods out of the State there might be a plausible argument made that that did interfere with interstate commerce, and we

might be investigated, and therefore any strikes might be investigated.

Mr. TOWNSEND. What do you manufacture?

Mr. SMITH. We represent chiefly all the manufacturers of stoves, of paper, of cement, of sugar, and most of the furniture manufacturers, and the manufacturers of canned goods, and a large number of automobile manufacturers, besides smaller ones.

Mr. RICHARDSON. You ship goods out of the State, and no matter how private the corporation was, if you had a strike you would be liable to inspection under this bill?

Mr. SMITH. I do not know whether I make myself clear or not. This is where we have not been able to understand that clause. If a strike stopped a train, then you would investigate the books and business of the carrier. If the strike shut down our plant and we were shippers of freight into any other State, I understand this clause would permit the investigation of our business.

Mr. RICHARDSON. How could you go into the merits of the strike unless you examined the books as to the pay of laborers, and so on?

Mr. SMITH. Your answer makes it clear, if you understand it that way, and I think we would object.

Mr. MANN. As a general rule there is no such thing as a manufacturing interstate corporation, unless you refer to the products. If you do not refer to the products in this case, the bill would only refer to transportation companies, and if it only referred to transportation companies, that is an easy matter to say; so that the very fact that the bill does not confine itself to transportation companies, but does embrace everything manufactured in interstate commerce, shows that it would cover all establishments in which wages are paid, whether owned by an individual, a partnership, an association, or a corporation or other combination.

Mr. SMITH. Perhaps we do not thoroughly understand the bill. We would be thoroughly in sympathy with a bill that would permit a commission to investigate a trouble such, for example, as the coal strike of 1902, where the materials were necessary to the handling of interstate traffic.

Mr. MANN. You would be in favor of any bill that permitted the investigation of somebody else?

Mr. SMITH. That is practically true, unless we were a railroad, or were producing something like coal, which is absolutely necessary in manufacturing.

Mr. MANN. But you are not a railroad.

Mr. SMITH. We have some railroads.

Mr. GAINES. Is not your position exactly this, Mr. Smith, that the manufacturing concerns that you represent are in the same position as the labor organizations which Mr. Fuller represents? Their sentiment on this bill has not yet crystallized, so that you are not in a position to say whether you do or do not want this legislation?

Mr. SMITH. I have upward of a hundred letters from members of our organization, and I have stated as nearly as I can their position. If they understood it aright, it would permit interference in any private business where they shipped the product out of the State when the plant was shut down. If that is true, they deprecate the idea of having another Government agency or commission to investigate their books. They are satisfied that the Government already goes far

enough, and they are content to present their report to the Department of Commerce and Labor and the Bureau of Corporations, but they want to settle their labor controversies themselves. I think the labor organizations also want to fight with the employers themselves.

Mr. TOWNSEND. That is, on questions between employer and employee?

Mr. SMITH. So far as, say, an individual employer and manufacturer of stoves in the city of Detroit is concerned, he does not concede that he is in that sense engaged in interstate commerce. But even with that distinction, in a case like that of coal men, for instance, the situation might become so gross and such a menace to the public as to require that it should be included in the bill. But so far as I know none of our owners would be placed in such a position as the coal people—become a menace to the people. The general idea of the bill otherwise I am in full sympathy with.

Mr. FULLER. Mr. Chairman, if you will allow me to say a word without going into the details of the matter, I would like to speak a word in view of the statements made by the gentleman that while we have taken no position upon this we do not want to be understood that the public has not a right to protect itself. If the gentleman's association feel that way, I want to say that they are dissimilar to our position in regard to it. The absence of our testimony or our argument to this bill does not necessarily mean that the public has no voice or should have no voice or interest in these troubles. On the contrary, we think they have.

Mr. BARTLETT. You represent an organization that is peculiarly associated with public utilities. That is true, is it not?

Mr. FULLER. We think ourselves, Mr. Chairman, that so long as individuals can settle their difficulties and do it right, and the public does not suffer unduly, it is better to have it done that way. I believe we all agree as to that. I believe that the best government is the government that governs the least, but there may come a time when that can not be done, and the public has an interest in it, and we feel the public has a right in those cases to ask Congress for legislation, regardless of what we or our opponents feel.

Mr. RICHARDSON. You do not believe in compulsory arbitration?

Mr. FULLER. No, sir. Compulsory arbitration is a misnomer. It would mean slavery to the working classes of the country.

Mr. MANN. Yet Mr. Fuller stated here that while this, in form, was not compulsory arbitration, yet it was in practice compulsory arbitration.

Mr. STEVENS. I think he stated that it was compulsory publicity.

Mr. TOWNSEND. There is no misunderstanding about what the meaning of the bill is. Those bogies brought up about that I do not think are real things.

Mr. ADAMSON. If it be true that public sentiment will enforce any correct declaration of opinion or principles, then there can be no doubt of the universal prevalence of the Ten Commandments throughout the earth.

Mr. KENNEDY. Do you think we ought to adjourn Congress, then, and quit?

Mr. MANN. They are quite well known.

Mr. ADAMSON. Yes; and observed everywhere, according to that doctrine, by everybody.

Mr. MANN. There is only one that I violate.

Mr. ADAMSON. If the opinion or influence of a commission like this would have the effect that is claimed for it, then there is no doubt about the Ten Commandments originating as they did.

Mr. TOWNSEND. If full notice has been given to the parties in this matter and they have not appeared, why not conclude the hearing on the subject?

Mr. RYAN. Why not have Mr. Townsend print the matter he has before him in the hearing?

Mr. ADAMSON. I would just continue the case.

Mr. TOWNSEND. Who is the secretary, Mr. Smith, or the president of your National Manufacturers' Association at New York?

Mr. SMITH. Mr. Cushing—Mr. Marshall Cushing.

Mr. TOWNSEND. I mailed a notice to Mr. Cushing and I got a letter from him stating that they were interested in the matter and would give it consideration, and the National Founders' Association wrote me that they had considered it and had no objection to it. Of course if there is nobody else to be heard here on it I would like to take it up with the committee, if the committee is ready. If the committee wants to take some further steps to get further information on the subject, I would like to put into the record and read the information I have.

Mr. ADAMSON. I think we ought to hear Mr. Townsend if he wants to be heard.

Mr. MANN. If you have some communications there of value we would be glad to hear them.

Mr. ESCH. When the bill was considered the other day Mr. Garfield was here, and he was asked to make some remarks, and he said he was not prepared at that time. I do not know whether he purposes to appear before the committee hereafter or not.

Mr. TOWNSEND. Mr. Neill and Mr. Garfield are ready to appear before the committee. Mr. Neill expressly stated here that if he was wanted and was notified he would be glad to appear. Of course I did not notify him, because I expected there would be some labor organizations and perhaps manufacturers' associations represented here, and I thought they would occupy the time.

Mr. MANN. Have you had any communication with the National Manufacturers' Association?

Mr. TOWNSEND. Yes, sir; Mr. Cushing, the secretary, was notified, and, as I said, I received a letter from him in regard to the bill, and he said the members of the association would be notified, and if they desired to take any action no doubt their representatives would be here.

Mr. ADAMSON. I want to ask a question in connection with the provision which Judge Richardson asked you about, as to cases like West Point, Ga., and Columbus, Ga., that are right on the line in Georgia, close to Alabama. All the farmers that live in Alabama for a distance of 30 or 40 miles raise cotton with the express purpose of selling it in these towns across the line in Georgia. Is that interstate commerce, and would the operations of those farmers and of their hands and tenants be subject to the operation of this act or bill?

Mr. TOWNSEND. If you were to construe it technically undoubtedly it would be. I am simply stating what I believe would be the operation of the bill, and I do not think any of the members would differ

from me very widely if they stopped to consider it carefully. I do not believe this commission would ever be called into existence except to investigate cases like the anthracite coal strike, or if there should be a combination in connection with the production of cotton in the South so that a few men absolutely controlled it and a strike would result in consequence, affecting the general production of cotton in the South, it would certainly be a matter that the Government should investigate; but not in the little instances. If you have a little city down there or some little place producing cotton, it would not materially affect the cotton production of the South.

Mr. ADAMSON. It would come under the purview of that law.

Mr. TOWNSEND. Have you an idea, Mr. Adamson, that the President of the United States, whoever he might be, knowing that his action would be subject to public criticism, would call into existence, except in cases of great emergency, such a commission as is provided for here?

Mr. ADAMSON. I do not know. I am asking you what the law says.

Mr. TOWNSEND. In connection with the statement of Mr. Adams, which has been printed—

The CHAIRMAN. You have the floor now. We have invited you to indicate the methods you propose to adopt in this investigation.

Mr. ADAMSON. If you will permit the suggestion, the United States is full of just such situations as that, and there are a great number of inconsiderable towns, and a great number of them cumulatively are like the sands on the seashore, on the beach, you know.

Mr. TOWNSEND. I see that our time is practically up, and so I will read, in connection with Mr. Adams's printed address on this subject, a letter by him—Mr. Charles Francis Adams, who was connected with the anthracite coal strike and who, practically, with the aid of Senator Lodge and some others, drafted this bill.

Mr. MANN. What was his connection with the coal strike?

Mr. TOWNSEND. He assisted in compiling the statistics and the report that was finally made.

Mr. MANN. Had he any official connection with it?

Mr. TOWNSEND. I think Judge Gray invited him to do it.

The CHAIRMAN. He is the statistician of the Interstate Commerce Commission?

Mr. TOWNSEND. No; he is another man. Mr. Lovering can tell you about him.

I am going to read a letter from Prof. John B. Clark, of Columbia University. At the suggestion of Mr. Stevens at the other hearing, I wrote to him. Mr. Stevens said that he had written some articles on this subject in one of the leading magazines, and I wrote to him. Here is his letter, dated December 10, 1906, after the first notice, when he thought the hearing would be held in a day or two. His letter is as follows [reads]:

COLUMBIA UNIVERSITY,
New York, December 10, 1906.

HON. CHARLES E. TOWNSEND,
Committee on Interstate and Foreign Commerce.

DEAR SIR: Your kind suggestion that I might possibly assist in the deliberations on the bill for the investigation of controversies, etc., is at hand. If it seemed to me that my presence would increase the probability of the passage of this bill, I should think it a duty to waive the engagements and difficulties

in the way of a journey to Washington at just this time and present what little I have to offer in person. As it is I venture to rely on writing. The bill appears to me to be an excellent step in the right direction. In forming an opinion of such a measure, I should always try to ascertain whether the working of it would be in the direction of securing normal rates of pay for laborers of different classes, and not merely whether it would end strikes and insure the resumption of important operations, such as mining, carrying, etc. This latter end is, of course, well worth securing at the cost of very much study and effort; and yet ending controversies by putting wages on a legitimate basis is infinitely better than terminating them otherwise.

The disturbing facts seem to me to be these: There is an exaggerated difference between the pay of some classes of organized laborers and that of other laborers. The maintenance of this difference requires the forcible exclusion of the mass of laborers from the favored fields. Strikes in this favored field depend on "slugging" for success. This violence is, up to a certain point, tolerated by local communities. The reason for this toleration is a fear lest allowing a new force of laborers to be gathered from the unemployed men within a wide area would establish an unduly low rate of pay. What such needy men will consent to take is not an accurate gauge of what labor can produce and of what it should receive. On the other hand, allowing violence enough to be used to exclude new men from the positions is confirming a monopoly of these positions, even though the maintenance of it requires misdemeanors running into crimes.

Completely compulsory arbitration, if it could be maintained, would repress the disorders and might, in a majority of cases, establish just rates of pay; but it would cut loose from the ordinary tests of wages. The courts of arbitration would not have as clear standards of wages before them as they would have under other systems. Mere conciliation confirms the rates already prevailing—in so far as the general range of pay of different classes is concerned—but lessens actual strikes, and thus precludes some violence and some of the injury which interrupted production entails. It allows wages still to be adjusted by strikes and violence, either actual or potential. The fact that the men can stop work and club off rivals, if they will, causes a board of conciliation to decide on about the rate of pay which such a strike would yield.

The compulsory investigation of disputes and the announcement of just terms of settlement would in many cases take the violent strike out of the range of possibilities. In the end the system might be made completely to remove "slugging" from the list of means of adjusting wages, while affording to organized labor a just rate of pay and, in fact, a higher rate of earnings per year than it now secures.

Under this system of compulsory adjudication, without the positive enforcement of awards, laborers might refuse to accept the court's decision and might go on a strike, but if they should then resort to criminal acts they would find no support in public sympathy, and it would be possible, by statute, to enjoin and secure a more rigorous maintenance of order than is now secured even when little violence is used.

There is a difference in principle, which is very fundamental, between allowing wages to be adjusted by strikes in which violence is tolerated and allowing them to be adjusted by strikes from which this is precluded. The latter involves an appeal to a natural rate of pay, while the former makes the rate depend on the fighting strength of a union, and in practice does great injustice to weak unions and to unorganized labor. It is desirable that, in submitting a case to arbitration, men should have the consciousness that after the award is published they will be able to strike if they so desire. They will almost never strike against an award that is within any tolerable distance of the line of justice when by striking they forfeit their tenure of place. It is this tenure which they now treat as property and defend as a man would defend his home. It may be legitimately treated by the public as a quasi property so long as it is held under a system that gives a just rate of pay. It may not be so treated when the pay is maintained by clubbing off rival workmen.

Excuse the length at which I have ventured to speak of the system which makes action by a court compulsory, but leaves the acceptance of the award voluntary. It would make a radical difference in principle between the basis of wages that would result and the present basis. The present bill would be entirely in line with such a system. Though I am not a lawyer, I appreciate the constitutional points in its favor and the general wisdom of taking a step at a time in changing a system, legal or economic. In the end my hope would

be that in the case of all industries having a national scope a Federal system of compulsory, rather than permissive, investigation might be established; that it would preclude strikes by confirming laborers in their tenure of place while investigations are pending, and also after awards are published and accepted, but would declare this tenure forfeited whenever workmen should vacate their places before or during investigations or after the publishing of awards.

In thus treating the claim of a right of tenure, the court would always hold in reserve an appeal to the general market for labor. It would let economic law at bottom determine its awards. It would not introduce an arbitrary basis of wages, but would confirm organized labor in the possession of its superior pay, in so far as this is based on legitimate advantages.

As this statement is necessarily hurried—for I do not wish to delay the receipt of it even by having it copied—I am venturing to send with it an article in the Political Science Quarterly, covering more fully some of the points touched on, though it does not treat them all. Both the letter and the article I send for whatever they may be worth. I hope very greatly that the strong beginning of a scientific system of adjustment of wages, which this bill makes, will be secured, and that, in due time, the system may be amplified.

Yours, very truly,

JOHN B. CLARK,

616 West One hundred and thirteenth street, New York.

The CHAIRMAN. He uses in that letter the word you objected to—"compulsive."

Mr. TOWNSEND. No; I used the term the other day. I believe in compulsory investigation. That is what this bill requires. There must be some power for the purpose of determining facts when they come up. Of course I do not wish to argue the merits at this time, but I presented to each member of this committee at that time a copy of Mr. Adams's address, which answers all the objections that have been made to the committee.

Mr. MANN. I mislaid mine. Why not put it in the hearing?

Mr. TOWNSEND. I would be glad, Mr. Chairman, if this document could be put in. It covers 12 or 14 pages.

The CHAIRMAN. What is the date of it?

Mr. TOWNSEND. It was in 1902, immediately after the anthracite coal strike.

The CHAIRMAN. I think it should be published.

Mr. TOWNSEND. Very well. I would like to put this in, together with the testimony of Mr. Neill. I hope to be able to defend the bill, though not exactly as it appears at present; amendments may be put in; but I mean the principle of the bill.

Mr. MANN. Don't you think it would be wise to postpone the consideration of the bill? Everybody wants to accomplish the same purpose you have in mind, but there is no likelihood of the bill being enacted into law by both Houses at this Congress. But your guess, of course, is as good as mine.

Mr. TOWNSEND. I am willing to admit it is as good. I think the chances are pretty good of getting it through. The President is very much in earnest about it and I think there are fair chances of getting it through. This bill was introduced last January.

Mr. MANN. It is a subject of very wide interest in one way and people are not prepared to express an opinion about it at the present time.

Mr. TOWNSEND. There never was a better notice given to the laboring men and to the manufacturers of the country than has been given as to this bill.

Mr. MANN. But they are at sea about it, notwithstanding the notice. Would it not be fairer to lay it aside even in the committee?

Mr. TOWNSEND. Is there any better way to get it before the country than by taking it up before the committee and discussing it? They will not think about it if it sleeps in this committee.

Mr. MANN. Oh, no; they will know that the subject is being agitated, and they will think about it all right.

The CHAIRMAN. I was going to say that if you will print such of your letters as you deem wise we will regard the matter of hearing, at least until some other action is had, as closed now. We will complete the record and have it in print in two or three days.

Mr. ESCH. I was going to ask whether Mr. Townsend thought the discussion would be aided by having Mr. Garfield here. I think he would know better than I about that.

Mr. TOWNSEND. I think it would be well to have Mr. Garfield and Mr. Neill back.

Mr. MANN. There would be no use in having Mr. Neill back unless there is objection from the other side. He has already favored the bill.

Mr. TOWNSEND. Some objections made by members of the committee can be answered with more authority by those gentlemen who have had experience as to matters of this kind, and their statements would have more authority than mine would have.

Mr. PAYSON. At this point, gentlemen, as an interested listener, possibly as a participator later on, may I inquire whether Mr. Neill has appeared before the committee since the recent strike on our road in Texas, giving the details of that?

Mr. TOWNSEND. No.

Mr. PAYSON. That strike, which was closed within the last week, is the best illustration, in my judgment, of the effect of the moral influence of an Administration in the settlement of a strike between a great employer and a large number of employees that has happened in the history of economic strikes anywhere. Mr. Neill personally went to Texas with reference to it.

I speak understandingly with respect to this, because I was in close contact with the chairman of the Interstate Commerce Commission and the Commissioner of Labor, representing the Executive Administration, through Mr. Neill's efforts, until the controversy was finally closed; and the contribution that will come from the inclusion of the correspondence from the chairman of the Interstate Commerce Commission and Mr. Neill and the strikers, on the one side, and from the railroad people on the other, will be the most illuminating literature on this subject that has ever been gathered together. This correspondence will show the committee what the committee ought to know. It furnishes a striking example of the necessity, not the propriety, of just such legislation as is proposed by this bill. I do not go into details here, but I am acquainted with the details.

Mr. TOWNSEND. Suppose we invite Mr. Neill here to-morrow?

The CHAIRMAN. Why not notify Mr. Neill and Mr. Garfield both?

Mr. TOWNSEND. Yes.

The CHAIRMAN. Then let it be the sense of the committee that when we adjourn we will take a recess until to-morrow. If there is no objection, that will be the order, that we will take a recess until half past 10 to-morrow.

Thereupon, at 12 o'clock, noon, a recess was taken until 10.30 o'clock a. m., to-morrow, January 16, 1907.

Mr. Townsend filed the following:

INVESTIGATION AND PUBLICITY AS OPPOSED TO "COMPULSORY ARBITRATION."

[By Charles Francis Adams.]

More than a year ago, during the great steel strike of August, 1901, I prepared a communication setting forth certain Massachusetts experiences during previous similar troubles as being worthy of consideration. They suggested a possible solution, practical in character, of what are known as "labor troubles"—the conflicts between employer and employee which result in strikes and tie-ups. Printed in various papers, this communication caused at the time some discussion. More recently I have been applying the experience then set forth, and the principles advocated to the existing and more serious complications which have since arisen. I have also been in communication with Col. Carroll D. Wright and Mr. Henry Cabot Lodge, one of the Senators from Massachusetts, discussing the facts and theories involved, with a view to what may be considered an outcome based on the systems, political and constitutional, as well as the labor conditions and the social and industrial organizations existing to-day in the United States. With a view to ultimate satisfactory results, the effort has been to recognize facts and to make action conform to them. My purpose to-day is to set forth as briefly as possible the conclusions so far reached.

In the communication referred to I first called attention to the nearest approach to a practical solution of the labor problem in accordance with American conditions, ideals, and traditions which has, so far as I know, yet been devised and put in use. And in making this statement I lay emphasis upon the word "American," for I hold it to be quite useless to take a system, whether purely ideal and theoretical or even in other countries practicable, and apply it generally. The first essential to success in constructing or developing any system of laws is that such system shall be in conformity with the conditions, ideals, and traditions of the community for which it is designed. To ignore them, much more to run counter to them, is to court failure at the outset. As Alexander Hamilton said more than a century ago of the United States Constitution, "A government must be fitted to a nation much as a coat to the individual; and consequently what may be good at Philadelphia may be bad at Paris and ridiculed at Petersburg." In like manner a system of legislation designed to regulate the relations of labor and capital may work well in Australia, but it by no means follows that a similar system would work well in Great Britain or Germany, and a system which might be practical, if not reasonably satisfactory, in Bohemia and Austro-Hungary would almost surely prove quite otherwise in the United States.

This I am well aware is a commonplace, almost, indeed, a platitude. And yet it is necessary to premise it carefully, for just so long as men are what they now are unusual exigencies will, under any system of government, from time to time arise, but when such do arise it is always very noticeable how the air is at once filled with suggestions of remedy, either quite untried or borrowed from other lands. And such are recommended for immediate adoption, wholly regardless of our Constitution, laws, political organization, or the spirit of our industrial development. This is empirical, and in these matters conspiracy is of all things, to be shunned.

I come now to the experience I have referred to. There is in the State of Massachusetts, and has been for over thirty years, a board of railroad commissioners. In the history of that board there was one important but now quite forgotten incident, from which a highly suggestive lesson may be drawn. It occurred twenty-five years ago. The Massachusetts railroad commission was organized on the theory that in adjusting matters of difference between the community and its railroad corporations the vesting of arbitrary power in such a tribunal was a hindrance to it rather than a help, for the reason that in America force is in the long run less effective in producing results than investigation and subsequent well-considered recommendations based thereon. The appeal was in every case to be made to reason and public opinion, and not to the sheriff or the soldier. Accordingly, in the event of differences between the corporations and their employees, even those resulting in strikes and tie-ups, the commissioners had no executive power. It was their duty, in a gen-

eral way to take official cognizance of the fact when the community was sustaining an injury or an inconvenience and to investigate the causes thereof. Having so investigated, the board was empowered to locate the responsibility for the injury and inconvenience and to make its recommendations accordingly, but those recommendations had merely a moral force. They could be addressed to the parties concerned and to public opinion only. Their effect, greater or less, was measured by the justice and good sense impressed upon them. The commissioners, moreover, disavowed any wish to be clothed with larger powers. They feared the possession of such powers. They were persuaded they could in the end accomplish more satisfactory results without them.

This theory was soon put to a test. At 4 o'clock in the afternoon of the 12th of February, 1877, all the locomotive engineers and firemen in the employ of the Boston and Maine Railroad Company stopped work in a body, abandoning their trains. The move was not altogether unexpected, but the operation of the road was seriously interfered with. The commissioners did not at first intervene, neither party calling upon them. Indeed, both parties were unwilling so to do, for each was apprehensive, apparently, of adverse action. During several days, accordingly, the commissioners preserved an attitude of silent observation. After the lapse of a reasonable period, however, the board concluded that it was plainly time to recognize the fact that the public was suffering serious inconvenience; for then the Boston and Maine Railroad was, as it still is, one of the principal arteries of eastern New England. The president and directors of the company and the employees of the Brotherhood of Locomotive Engineers were accordingly notified that the board proposed to take a hand in the business. This it proceeded to do. An immediate investigation was notified. Both parties appeared—for, without confessing itself in the wrong, neither party could well help so doing—and professed a perfect willingness to submit their cases. No suggestion of a readiness to abide by any decision that might be given thereon was either asked for or given; but the board proceeded to hear witnesses and to elicit the facts. The inquiry was continued through three days; and, on the 21st of February, the report of the board was made public, appearing in full in all the newspapers of that date. In it the commissioners, after carefully and judiciously sifting out the essential facts from the evidence submitted, placed the responsibility for the trouble where the weight of evidence showed it belonged; and thereupon proceeded to make such recommendations as in its judgment the exigencies called for. The effect was immediate. An authentic record was before the community, and public opinion, crystallizing, made itself decisively felt.

It is not necessary to enter further into the history and merits—the rights and the wrongs—of that particular struggle. My object is merely to call attention to what was then done, and done successfully, as constituting the nearest practical approach consistent with our American political and social system to what is known as “compulsory arbitration.” It was compulsory inquiry only; and an appeal thereon to the reason and sense of right of all concerned. Reliance was placed in an enlightened sense of right of all concerned, and an informed public opinion.

Here, then, is a system. Under it a public tribunal is provided; that tribunal takes official cognizance of what is notorious; and, when either the peace or the business of the community sustains prejudice or is gravely jeopardized, it becomes its duty to intervene. It intervenes only for the purpose of obtaining the information necessary to enable it to form a clear, judicial opinion. It then sets the facts before the community, and makes its recommendation. It locates responsibility. There it stops; for it can compel obedience on neither side.

Now, let us apply this proposed system to the conditions which, for the last eight months, have existed in the anthracite coal region. Let us assume that provision by law existed under which the Executive, either national or State, was empowered and directed to appoint such a board *pro hac vice*, calling it into existence to meet a sudden emergency. The chances, I submit, are at least nine out of ten that, if such a machinery had existed, and had been judiciously employed either by the governor of Pennsylvania or the President of the United States, a practical solution of the difficulty which for the last eight months has harassed the country would have been reached. The community began to sustain grave prejudice, at an early stage of the troubles. The resulting injury became more and more flagrant as the weeks passed by. The continuance of such conditions not only was injurious to private interests, but, as we all know, the public peace itself was involved. Under such circumstances, experience shows that neither party will, for obvious reasons, voluntarily call upon a board or commission to intervene; for such action is tantamount to a confession of

weakness. Both will look at it askance. It must rest, therefore, in the discretion of the Executive to decide whether a case has arisen which calls for public initiative; the public being a third party to the controversy. That it is such, it is impossible to deny. It therefore has rights and interests—a standing in court. It having been decided, in the exercise of a sound discretion, that circumstances call for this third party to act, the Executive gives notice to all concerned that, at the proper time and place, it is proposed to enter upon an investigation. If both parties see fit then to appear and submit evidence as to the facts, that evidence becomes public property. If one party appears, the other absents itself at its peril. Should neither party appear, producing authentic documents and putting in a case, the board would proceed to enlighten itself through all other accessible means. In behalf of the third party to the controversy, of which it is the representative, it should be empowered to summon witnesses, and to enforce the production of documents. Having completed its investigation, it would then make its recommendations definitely, and, if it knows its business, concisely, locating responsibility where the evidence shows it belongs. A practical solution of the trouble, such as would naturally commend itself to the judgment of an unprejudiced tribunal, would be pointed out. A solution of that sort always exists. This report would be transmitted to the appointing power, whether President or governor. By him it would then be communicated to the parties in interest, including the public; and, in due time, submitted to Congress, or the State legislature, always with such enforcing or qualifying recommendations as might commend themselves to executive judgment. The report so made would carry with the public and with the parties concerned exactly that degree of weight its judicial character and reasoning might impart to it,—that, and nothing more. It could not be enforced by any governmental process. There would be neither sheriff, nor posse comitatus, nor military force, behind it. But, if well reasoned and impartial, it would bring to bear the moral weight of an enlightened public opinion.

Did such a machinery as this exist, simple and advisory only, it is not unsafe to say that it would prove adequate for the settlement of nine complications out of ten. In the case of the anthracite strike, for instance, if the Commission since appointed by President Roosevelt could have been appointed four months sooner, while the conflict was in the earlier stage of development, its report would have afforded to one or both parties concerned an opportunity to withdraw creditably from a position which afterwards, for at least one of them, became false and consequently perilous. What the country has needed is light—the possession, if not of undisputed facts, at least of an authentic statement of the facts in dispute. Had these been spread upon the record and submitted for public consideration, it could hardly be otherwise than that recommendations firm, judicious, and reasonable, based thereon, would have sufficed to remove from the path the impediment of false pride—that stumbling block in the case of nine strikes out of ten. An opportunity of gracefully receding would have been offered to one or both parties concerned. Should either party have then insisted, in the face of light and reason, the responsibility for obstinate insistence would have been upon its head. In the United States public opinion has in such cases a very summary, as well as effective, way of enforcing its own process. An excellent and sufficient example of this was furnished in the sudden change of front on the part of one of the parties to the present anthracite complication, executed in the face of a rapidly rising popular sentiment. Persistence was felt to involve too much risk. It would be so in the great mass of these cases. They are preventable. But what is wanted for their prevention is not force, but light and guidance.

This generally acknowledged fact to the contrary notwithstanding, it is singular to note, when any controversy arises, how such a method of settlement as that here proposed is at once set aside as being inadequate and unworthy of consideration, because behind it there is no constable's club or soldier's bayonet. In fact, however, the word "compulsion" has an unpleasant sound to Americans. In theory only is the thing itself popular. With us the final appeal must always be to reason; and public opinion enforces the edict of that appeal. In every field of legislation this has been again and again illustrated; and yet the appeal to reason, as now here made, is almost as invariably as contemptuously dismissed from consideration on the ground that there is behind it no force to compel obedience.

It is this tendency to compulsion against which, I submit, it is the especial function of the Civic Federation to protest. We should lay emphasis on the fact that our appeal is to reason and not to force. The difficulty with the federation

is not want of power, but want of official standing. It is a volunteer. At no time, for instance, during the last six months could it enter the field as representing the executive of either State or nation; and had it entered the field on its own initiative only it would have been in imminent danger of incurring the contempt not only of both parties to the controversy, but of the public itself. It has, therefore, been compelled to inaction—a purely waiting attitude. This fact in itself discloses a want. A piece of machinery is lacking.

But it is argued that such boards already exist and the results of their efforts have not proved satisfactory. This assumption I deny, and on broad grounds. When such large interests are involved, as, for instance, in the strike in the anthracite coal region, represented by men of capacity on each side, to deal effectively it would be necessary for the community to have the power of availing itself of the services of the very best men and those of the highest character and authority at its command. If it speaks at all, it should speak adequately. If in June it had been the duty as well as within the power of the President or of the governor of Pennsylvania, recognizing that the public interests and convenience were involved and that lasting injuries might be entailed, to take cognizance of the situation in the anthracite region, it should under the system proposed have been the duty of either executive to call upon the very strongest men in the community—those of highest character and most intimately acquainted with every condition involved. No man in the country so called upon could have refused to serve; yet such men will not accept, nor should they be expected to accept, merely salaried positions, permanent in character, on a board of subordinate importance.

The machinery now suggested should, moreover, be reserved and brought into action only in special exigencies. It is not designed nor is it adapted to everyday use. In that field the existing boards are doing good service, and doing it sufficiently well, but for obvious reasons they are not equal to the exceptional occasions. They occupy the positions of municipal courts, but where grave problems of constitutional law present themselves such are not referred to police magistrates for decision, nor would the decision of those magistrates if rendered upon them carry the necessary weight. Exceptional cases can only be dealt with exceptionally. Fortunately they do not arise often. In the field of labor complications, for instance, two only have occurred during the last eighteen months. But they unquestionably will recur periodically in the future, and when they come their presence is unmistakable. It would then be for the executive, State or national, to take cognizance of what is apparent and to set in motion the special machinery designed and held in reserve for that exigency.

It is equally futile to say that the parties concerned, unconsenting thereto, might decline to appear before such a commission. In such a case the commission would simply proceed with its inquiry in the absence of such party or parties. With the power of summoning witnesses and compelling the production of books all necessary information would be accessible to it. But the parties could not refuse to appear. They would not dare to refuse.

Finally, the report of such a tribunal, addressed to its appointing power, would be like the decision of a high court of justice on an abstract point of constitutional law of the first magnitude. Read by every one, if the decision were weak or bore in it signs of prejudice or interest it would, falling dead, fail to influence public opinion. Equally, if handled with a firm and intelligent grasp it would carry conviction. That conviction when so carried is in this country irresistible. It in the end makes opposition confessedly factious.

The trouble with us is that we are always prating of the force of public opinion, but when the exigency arises we evince no confidence whatever in it. Like a parcel of children, we are apt to cry out for the master to come in and enforce instant obedience with the rod. I submit that permanent results with us in America are not reached in that way. Let us in this matter have the courage of our convictions.

I have already expressed my belief that if such a system as I have here suggested could be brought into being through a very simple act of legislation, which, open to no constitutional or other objection, would be in entire accord with our industrial system, our traditions, and the American ideals, it would settle nine matters of controversy which arise out of ten. I now further submit it is highly desirable from every point of view that the tenth case of controversy should not be settled, but should be fought out. In the practical affairs of life, as we all know, it is necessary now and then that the fight should be to a finish. Our own civil war was a case in point. No arbitration ever could have settled that; no appeal to reason would have produced conviction. The issue had to

be fought to the bitter end. That it was so fought we are now all grateful, though at the time the demand was loud and incessant for some compromise—any close to the "useless, the suicidal strife." This exceptional case, however, by no means brought the principles of arbitration and reasonable adjustment into discredit and consequent disuse. On the contrary, they have grown stronger ever since, securing more and more hold on public opinion. What is necessary, in my judgment, is to organize that public opinion and, when organized and made effective, to rely on it to produce all desirable results in the average case. But it can only be organized by bringing it to bear through the medium of capable men thoroughly informed upon the special matter under discussion and competent to express courageous opinions clearly. The tribunal doing this should then dissolve. It should not continue in existence the target for criticism, partisan discussion, and popular odium. Should a new case arise, another tribunal of a similar character would at the proper time be called into being to deal with it in its turn.

Sound and fruitful legislation can not, moreover, be improved. It is idle to talk in language as empty as it is grandiose of "curbing," or regulating by any patented method, potentates and power of such large, and yet vague, character as those that labor and capital are now continually bringing into the field. A governmental regulation which shall deal satisfactorily with them must rest upon a broad and well-considered basis of experience. It would be the natural outcome of a series of reports of tribunals such as that suggested. It is equally futile to suppose that this labor contest in which we have been engaged and of which we have so long experienced the inconvenient results is going to be settled in a day, or an hour, or next year, or within the next ten years. It will continue with us during the remainder of our lives, and with our children after us; but we will slowly and tentatively approximate to satisfactory results. Under these circumstances, if a solution, represented by a proper legislative and administrative machinery, is ever to be evolved, it must be evolved from a series of wearisome investigations, and reports thereon, no less judicial and well considered than that body of great opinions from which the present Constitution of the United States has been slowly built up and rounded out.

In the case of the National Executive some question has been raised as to its functions and powers, in view of our constitutional system and the reserved rights of the States. I can not, however, see that this enters into the present question or what is now proposed. It is certainly the duty of the President to inform himself upon all questions relating to the carriage of the mails and to the movement of commerce, whether foreign or interstate. Questions of revenue are involved; questions affecting the transportation of material, men, and supplies may be involved. To inform himself he should be empowered to appoint agencies competent to investigate and report thereon. It is not now proposed to clothe him with any power in these exigencies, except that of receiving a report, forwarding it to the parties involved, together with his own recommendations, and then submitting the same to Congress. To give the President power to intervene by any Executive act of a compulsory character would, in my opinion, jeopardize at the beginning every desirable ultimate result of the experiment proposed. Congressional action is always in reserve, but even Congressional action ought to be intelligent, and to be intelligent it should be well considered—based on a considerable body of facts judicially ascertained. The judicial ascertainment of facts and the study of principles involved therein is therefore what the occasion immediately demands. Sound remedial legislation will in due time result therefrom. But at present the chances are enormous that crude and precipitate effort at a compulsory betterment of existing conditions would only make what is already quite sufficiently bad distinctly worse.

As the result of my conversation with Colonel Wright and Mr. Lodge, I have undertaken to draw up a simple act in few sections, based upon the foregoing principles and looking to the results indicated. It could be passed, *mutatis mutandis*, by any State legislature or by Congress. It would contravene no constitutional provision or private right, but simply secure to the community—the third party involved in every controversy of this sort of any magnitude—the right to get at the facts in dispute, and after so doing to bring to bear an intelligent pressure of its own, looking to a reasonable solution of troubles sure hereafter to arise. Such an act has accordingly been prepared and is subjoined hereto.

BOSTON, MASS., December 17, 1902.

CHARLES F. ADAMS, Esq.,

23 Court st., Boston, Mass.

MY DEAR MR. ADAMS: I have considered the questions suggested by your paper upon the investigation by the President of labor troubles and I beg to submit a draft of an act which I believe embodies your views on the subject.

Yours, truly,

JOHN G. PALFREY.

AN ACT To provide for the investigation of controversies affecting interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SECTION 1. That whenever within any State or States, Territory or Territories of the United States a controversy concerning wages, hours of labor, or conditions of employment shall arise between an employer being an individual, partnership, association, corporation, or other combination, and the employees or association or combination of employees of such employer, by reason of which controversy the transportation of the United States mails, the operations, civil or military, of the Government of the United States, or the free and regular movement of commerce among the several States and with foreign nations, is in the judgment of the President interrupted or directly affected, or threatened with being so interrupted or directly affected, the President shall in his discretion inquire into the same and investigate the causes thereof.

SEC. 2. To this end the President may appoint a special commission, not exceeding seven in number, of persons in his judgment specially qualified to conduct such an investigation.

SEC. 3. Such commission shall organize with all convenient despatch, and upon giving reasonable notice to the parties to the controversy, either at the seat of disturbance or elsewhere as it may deem most expedient, shall proceed to investigate the causes of such controversy and the remedy therefor.

SEC. 4. The parties to the controversy shall be entitled to be present in person or by counsel throughout the continuation of the investigation and shall be entitled to a hearing thereon subject always to such rules of procedure as the commission may adopt, but nothing in this section contained shall be construed as entitling said parties to be present during the proceedings of the commission prior to or after the completion of their investigation.

SEC. 5. For the purpose of this act the commission or any one commissioner shall have power to administer oaths and affirmations, to sign subpoenas, to require the testimony of witnesses either by attendance in person or by deposition, and to require the production of such books, papers, contracts, agreements, and documents as may be deemed material to a just determination of the matters under investigation; and to this end the commission may invoke the aid of the courts of the United States to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents, and for the purposes of this section it shall be vested with the same powers to the same extent and under the same conditions and penalties as are vested in the Interstate Commerce Commission by the act to regulate commerce, approved February 4th, 1887, and the acts amendatory and in addition thereto, and it shall be the duty of the said courts of the United States to render said commission the same aid to the same extent and under the same conditions as is provided by said acts in aid of said Interstate Commerce Commission, and witnesses examined as aforesaid shall be subject to the same duties and entitled to the same immunities as is provided in said acts.

SEC. 6. For the purposes of this act the Commission may, whenever it deems it expedient, enter and inspect any public institution, factory, workshop, or mine, and may employ one or more competent experts to examine accounts, books, or official reports, or to examine and report on any matter material to the investigation in which such examination and report may be deemed of substantial assistance.

SEC. 7. Having made such investigation and elicited such information of all the facts connected with the controversy into which they were appointed to inquire, the Commission shall formulate its report thereon, setting forth the causes of the same, locating, so far as may be, the responsibility therefor, and making such specific recommendations as shall in its judgment put an end to such con-

troverſy or diſturbance and prevent a recurrence thereof, ſuggeſting any legiſlation which the caſe may ſeem to require.

SEC. 8. The report of ſuch Commiſſion ſhall forthwith be tranſmitted to the Preſident and by him communicated, together with ſuch portions of the evidence elicited and any comments of further recommendation he may ſee fit to make, to the principal parties reſponsible for the controverſy or involved therein; and the papers ſhall be duly tranſmitted to Congress for its information and action.

SEC. 9. The Commiſſion may from time to time make or amend ſuch general rules or orders as may be deemed appropriate for the order and regulation of its investigations and proceedings, including forms of notices and the ſervice thereof, which ſhall conform as nearly as may be to thoſe in uſe in the courts of the United States.

SEC. 10. The Preſident is authorized and empowered to fix a reaſonable compensation to be paid to the members of the Commiſſion from the Treasury at ſuch times and in ſuch manner as he ſhall direct. The Commiſſion ſhall have authority to employ and fix the compensation of ſuch employees as it may find neceſſary to the proper performance of his duties, ſubject to the approval of the Secretary of the Interior.

The Commiſſion ſhall be furniſhed by the Secretary of the Interior with ſuitable offices and all neceſſary office ſupplies. Witneſſes ſummoned before the Commiſſion ſhall be paid the ſame fees and mileage that are paid to witneſſes in the courts of the United States.

All of the expenſes of the Commiſſion, including all neceſſary expenſes for transportation incurred by the Commiſſioners or by their employees under their orders, in making any investigation under this act, ſhall be allowed and paid on the preſentation of itemized vouchers therefor approved by the chairman of the Commiſſion and the Secretary of the Interior.

SEC. 11. No Commiſſion appointed under this act ſhall continue for a period of over three months from the date of the appointment thereof, unleſs at any time before the expiration of ſuch period the Preſident ſhall otherwiſe order.

BOSTON, MASS., *December 10, 1906.*

MY DEAR SIR: I have to acknowledge the receipt of your favor of the 7th inſtant, incloſing a copy of Houſe bill No. 10840.

You ſuggeſt my appearance before your committee on Friday next in connection with this meaſure.

Other engagements will make it impracticable for me to be in Washington at the date named. Neither ſhould I appear before the committee, could I do more than take up its time, which I do not doubt is otherwiſe fully and more advantageouſly occupied. Everything I have had to ſay in this matter I have put forward as clearly as I know how in a paper ſubmitted two or three years ago to the Civic Federation. Copies of that paper I now incloſe, one for each member of your committee.

Did I appear before it, I could only repeat what I have herein ſuggeſted.

I will merely add that the meaſure ſuggeſted failed to commend itſelf to either Mr. Gompers or Mr. Mitchell of the labor organization. Their objection to it was that they thought it tended in the ultimate direction of what they called "compulſory arbitration;" and, in any event, it was calculated to reduce the preſent industrial chaos into a certain degree of order, a reſult which they did not regard with favor. The upſhot of the diſcuſſion which took place at the time the bill was preſented left a very unfavorable impreſſion on my mind. I was diſtinctly led to believe that the labor organizations, for purpoſes of their own, were very unwilling to ſee any meaſure introduced which was likely in any way to diſturb ſtrikes or complications.

I remain, etc.,

CHARLES F. ADAMS.

HON. CHARLES E. TOWNSEND, M. C.,
Washington, D. C.

P. S.—I have mailed the copies of the document referred to, one for each member of the committee, to your address under a ſeparate cover.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Wednesday, January 16, 1907.

The committee met this day at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. Are your people ready, Mr. Townsend?

Mr. TOWNSEND. I invited Mr. Garfield and Mr. Neill to be here this morning, at the suggestion of the committee, and they are both here. I understand that it is desired that some questions be asked of Mr. Neill, but if Mr. Garfield wishes to make his statement first we will be glad to hear him.

Mr. Garfield, have you looked over House bill 10840—the bill which provides for the investigation of controversies affecting interstate commerce, and for other purposes?

**STATEMENT OF MR. JAMES B. GARFIELD, COMMISSIONER OF
CORPORATIONS, DEPARTMENT OF COMMERCE AND LABOR.**

Mr. GARFIELD. Yes, sir; I have looked it over.

Mr. TOWNSEND. What have you to say, Mr. Garfield, with reference to this bill, as to the necessity for such a measure as this? I would prefer that you take your own way of stating anything you have to say with reference to the bill.

Mr. GARFIELD. Telling you generally about it, the chief value, to my mind, of this measure or any measure similar to it is that it would give to the public, through a duly accredited set of officials, the full facts about any special controversy of that character. I do not find, from the study I have made in a general way of these measures, that an attempt to compel arbitration is valuable, and that is not required by this measure, as I understand it. But whenever the public at large has all the facts bearing on any special conditions, such as are contemplated by that measure to be considered by the proposed commission, with those facts in view a proper public sentiment and opinion is very readily formed and crystallized, and if the case is urgent enough it may result in legislative action.

On the other hand the mere fact of publicity—all the people on both sides being required to state exactly what their contentions and claims may be, and what the conditions are—would have the effect of clearing the air enormously, and of making it possible for the parties themselves to get a clear understanding of what the conditions are; and from that clear understanding very often, I believe, a settlement would be effected without any further action whatever. And if a commission of that kind should conduct its inquiries quickly and intelligently, free from unnecessary detail and technicality, I believe that in a great many cases they would get the parties face to face in such a fashion as to make possible the settlement of their differences.

Of course, that would not by any means always result, but from the work of the Bureau of Corporations I have found just this, that as I have gotten men in my office or in their offices and learned from them the true conditions regarding their own business, and talked with them regarding the general conditions of business, that knowledge, together with what I have learned from other sources, has wiped out of existence a great many misunderstandings.

You know that men very naturally are looking primarily to their own side of a question, and the question of self-interest is usually

uppermost, and their own point of view is the view that dominates their thought very much, and they have not had time or opportunity to look into it from the other man's point of view; but if the machinery is afforded of getting at the other man's point of view and presenting it dispassionately, without question it is a very effective means of settling disputes of that character.

I am aware, Mr. Chairman, that this is a very general statement, and I am simply giving it as a result of the experience I have picked up in the last few years, and of my knowledge of machinery of this kind which may be provided by the Federal Government.

Mr. TOWNSEND. What do you say, Mr. Garfield, as to whether in your opinion a provision such as is carried in this bill with reference to the President's power to appoint a commission would be used on every occasion, whenever there was a disturbance between an employer and employees, whether it was large or small?

Mr. GARFIELD. I think the mere fact that such a commission may be appointed would very often have the influence of impelling men to settle their differences before there would be occasion for such an investigation as that which would be made by the commission. On the other hand, it might in certain cases stimulate requests for investigation, and that is where the discretion of the Executive would have to be exercised very wisely, to see to it that commissions were not appointed for petty disturbances, and that trivial matters were not brought before the commission, or rather that the commission should not be organized for the purpose of considering merely trivial differences, but that it would be an efficient engine to use in cases of disturbances of magnitude.

The CHAIRMAN. Mr. Garfield, you spoke with approval of voluntary arbitration. Do you think that this bill provides for voluntary arbitration?

Mr. GARFIELD. I think, as I understand it, that the bill does not provide for arbitration in the sense of the commission reaching any conclusion that would be binding upon the parties. It provides for the compulsory attendance of witnesses, without doubt, and it provides for the compulsory giving of evidence regarding the facts. It is not an arbitration measure in the sense that the commission reaches a conclusion which could in any sense be binding upon the parties.

The CHAIRMAN. What would be the objection, in your mind, to such legislation as would enforce the decrees or findings of a board of arbitration?

Mr. GARFIELD. I am somewhat at a loss to answer that question, Mr. Chairman, for this reason: The character of questions to be submitted, if I recall the wording of this bill, would be very broad. There would be no limitation as to the questions to be submitted, and there might be very serious difficulty. If the commission attempted to enforce orders regarding certain kinds of question that might arise, it might involve the commission in the exercise of powers which really could not be enforced; and with my present knowledge regarding the scope or the character of questions to be submitted I should hesitate to express a favorable view to giving a commission so organized the power to enforce its findings.

The CHAIRMAN. What would be the difficulty, in your mind, as

presented to your mind, of enforcing the findings of a board of arbitration?

Mr. GARFIELD. Some of the questions, I can conceive, might more properly, very properly, be subject to State laws. For example, the question of hours of labor, questions of wages, questions pertaining to sanitary conditions of the shops and conditions of safety appliances, and matters of that kind, which are not definitely under interstate commerce, but which might be connected with it from the manufacturing side. The commission might, as to those questions, reach a very different conclusion from that reached by the legislature of a State in which, for example, the manufacturing corporation is operating, and if it is attempted to enforce a finding contrary to the State laws I can conceive that there would be very serious difficulty and conflict as between two jurisdictions.

Mr. ESCH. In your opinion, would it be better to appoint a permanent commission or to have commissions appointed to meet every exigency as it arises?

Mr. GARFIELD. I think special commissions would be better than a permanent one. We have under the statute a provision for a board of arbitration which, as I understand it, has never been effectively used. No; I thought it had never been used, but I am advised that there were two cases in which it was used, although I do not know what they are.

Mr. ADAMSON. You think publicity would clear a few or maybe all situations, both Federal and State, and you think this bill would be valuable because of the information which would be elicited?

Mr. GARFIELD. Yes; that is the principal effect.

Mr. RICHARDSON. As I understand you, Mr. Garfield, the commission would create public opinion by which the parties would be induced to abide by the award of the commission?

Mr. GARFIELD. It would afford facts upon which the public opinion might be based.

Mr. ADAMSON. It might establish a change of regulations in the future?

Mr. GARFIELD. Yes, sir.

Mr. RICHARDSON. You say that the commission would create a public opinion to such an extent that the parties would abide by the award?

Mr. GARFIELD. Yes. The parties themselves might agree that they would abide by the result of the commission.

Mr. BURKE. Is it your opinion, Mr. Garfield, that this law should be applied in a case where the parties to it were simply manufacturing corporations on the one side and employees on the other, regardless of any interstate institutions or considerations?

Mr. GARFIELD. I think it would not be possible to compel the attendance of witnesses unless the action of the commission was based upon the proposition that they were engaged in interstate commerce.

Mr. ADAMSON. Is there any manufacturing enterprise anywhere in this country that is not engaged in interstate commerce?

Mr. GARFIELD. Very few indeed.

Mr. STEVENS. You have had much experience in your Bureau concerning the investigation of the affairs of corporations. Now, under section 6 of this bill, where authority is given to enter and inspect institutions and workshops and mines, and examine the accounts—

Mr. TOWNSEND. That is stricken out.

Mr. STEVENS. Then in that case I will not interrogate you further on that line.

Mr. MANN. Is it not your idea, Mr. Garfield, that the effect of this bill would be to enforce public opinion when the board of arbitration had reported?

Mr. GARFIELD. I believe that would be one of the chief effects or results of the measure, Mr. Mann.

Mr. MANN. That is, that the lash or whip of public opinion would force the side which still might believe itself to be right to yield, because of the effect upon the public?

Mr. GARFIELD. Yes.

Mr. MANN. Is it not quite probable that public opinion may have been formed before the commission is appointed, and that in times of political excitement or campaigns a board of arbitration might be appointed to yield to public opinion?

Mr. GARFIELD. It is quite possible.

Mr. MANN. Is it likely, in a time of some excitement—in a campaign, for instance, and an excitement over a strike—that a President who was a candidate for reelection would dare appoint—an ordinary President; I am not referring to our present President, for he dare do anything—would dare appoint a commission, regardless of public opinion, to make a report without considering what public opinion already was, and that it might defeat him for reelection?

Mr. GARFIELD. Of course it is impossible to give a direct answer to that; but, I think, Mr. Mann, just this, that any great power which may be used beneficially is likewise liable to misuse, and I am never afraid of a great power being granted because of the possibility of its misuse.

Mr. MANN. We see so often cases of misuse of power by the administrative branch that we are afraid of it.

Mr. ADAMSON. You have seen little boys, street gamins, get ahead of a parade, but while they were physically ahead of the parade, they were not really leading the parade, but following it?

Mr. GARFIELD. I can see that what Mr. Mann suggests might happen, and I remember that when the Bureau of Corporations was organized much the same argument was expressed against that.

Mr. MANN. We created the Bureau of Corporations here in this committee, and there was no such argument made, that I heard, against it.

Mr. GARFIELD. It has certainly been urged in public since that.

Mr. MANN. Since that?

Mr. GARFIELD. Yes; and at the time of its organization, too.

Mr. MANN. You have recommended that all these corporations doing interstate-commerce business shall be required to take out a license from the General Government, as I understand it?

Mr. GARFIELD. Yes.

Mr. MANN. Is not this right along the same line?

Mr. GARFIELD. Very much the same. It is affording still greater knowledge on the part of the Federal Government upon which, if Congress saw fit to authorize the license system, such a license system could be more intelligently enforced and operated.

Mr. RICHARDSON. Don't you think that this language in this bill—

A controversy concerning wages, hours of labor, or conditions of employment shall arise between an employer being an individual—

is very broad? Don't you think so?

Mr. GARFIELD. Without doubt it is.

Mr. RICHARDSON. Don't you believe that language ought to go out of this bill? Doesn't it give too much authority entirely?

Mr. GARFIELD. I think this is perfectly true, that the interstate-commerce clause deals with individuals quite as much as with corporations, and it is still a question for Congress to determine how far and how rapidly they desire to extend the affirmative power of the Federal Government over interstate commerce.

Mr. RICHARDSON. The provisions of this bill would affect all interstate commerce?

Mr. GARFIELD. Yes.

Mr. RICHARDSON. You could think of things of that kind where the situation could occur with individuals only, and yet the discretion and power to use this great machinery is left in the hands of one man?

Mr. GARFIELD. Yes.

Mr. ADAMSON. Everything in the way of business that crosses a State line is interstate commerce, whether it is an ox cart or a foot pedal. The question is, What detail of origination and invention shall we carry?

Mr. GARFIELD. I have always recommended in my reports that the first step along the line of license shall be applied to corporations. There are certain instances, it is true, where individuals are doing an enormous business, but they are an exception to-day, and for my own part I believe it is wiser to extend the power of the operations of the Federal Government over the corporations first than to include all individuals in the same act. But that is a matter of individual opinion.

Mr. ESCH. This bill authorizes the commission so appointed to recommend remedial legislation. In your opinion is that an advantage or a disadvantage, in view of the fact that that recommendation for legislation might be out of harmony with existing State law?

Mr. GARFIELD. That would be for the members of each commission to see to—how far they ought to make recommendations of that kind; and I can see no disadvantage in authorizing the report to Congress of their recommendations. There again it would be for Congress to determine how far they would seek by Federal legislation to affect conditions that are now controlled by State legislation. The principal subject that would be so touched would be what comes under the definition of police powers.

Mr. ESCH. If that sentiment was strong enough, then it might result in a change of a State law?

Mr. GARFIELD. It might very readily.

Mr. MANN. We have pending here before us a proposition to investigate child labor—in the House of Representatives—and a proposition to investigate the subject of the labor of women in industrial employments, and a proposition to investigate the length of hours of labor in different parts of the country, and so forth and so on. Now, would it be possible under this, if the Administration desired to appoint a commission to investigate a subject, to take advantage of any little strike somewhere and appoint a commission which, in order to arrive at a conclusion in that case, would feel that it was necessary to investigate the whole subject-matter without the direct authorization of Congress?

Mr. GARFIELD. I do not see anything in the bill that states the exact scope of the questions that might arise. That, necessarily, as I understand, in this measure is left to the discretion of the President and the Commission, and it is quite true that there might be what you call a fictitious case presented if an Administration saw fit to attempt to make an investigation of that kind.

Mr. MANN. Would it not be quite probable, in the event that some case did arise somewhere involving any of these questions, that in order to settle that particular case, and possibly to present recommendations to Congress, the Commission would not only feel it desirable but necessary to investigate that whole subject-matter?

Mr. GARFIELD. If necessary I think they ought to make the investigation. If it were a question of desirability, that would have to be left to their discretion.

Mr. MANN. So that a bill like this might start half a dozen commissions into being to investigate any subject in connection with manufacturing or labor?

Mr. GARFIELD. If there were difficulties between employers and employees.

Mr. MANN. Of course there are always difficulties somewhere.

The CHAIRMAN. Suppose that condition described in section 1 of this bill exists. Does not the Bureau of Corporations under the present law have the power to do everything in the direction of securing publicity that is provided for in this bill?

Mr. GARFIELD. As far as corporations are concerned, without doubt it has.

The CHAIRMAN. So that by this bill we are only enlarging the law to make it applicable to the condition that involves an individual or a partnership as a manufacturer?

Mr. GARFIELD. Yes; so far as the Bureau of Corporations is concerned, yes; so far as the possibility of that being done, no. It would be utterly impossible, with the general investigation of industries that is being made for the Bureau, to undertake special investigations of the character contemplated by this bill.

Mr. ADAMSON. Strikes and disturbances are exceedingly rare in the cases of individual employers, are they not?

Mr. GARFIELD. I am not positive as to that.

Mr. ADAMSON. They generally occur in large corporations?

The CHAIRMAN. Following out that line of questions, what is there lacking in the present law that in any way stops or checks or limits the power of investigation on the part of the Commissioner of Corporations?

Mr. GARFIELD. Nothing whatever.

The CHAIRMAN. He could make under the present law a full and complete investigation of the situation described in section 1 of this bill?

Mr. GARFIELD. I have no doubt of it.

The CHAIRMAN. So far as it applied to a corporation?

Mr. GARFIELD. So far as it applied to the control, management, and conduct of corporations.

The CHAIRMAN. Do you think the report of a special commission appointed for a specific purpose would have a greater influence in forming correct public opinion in regard to a dispute than the accom-

plished, efficient, experienced officers that are appointed under the interstate commerce law would have?

Mr. GARFIELD. So far as the corporate end of it is concerned, I think there would be little or no difference between them. Probably the report of the Commissioner of Corporations would have more weight than the report of a special commission, if the office were properly organized. On the other hand, this bill deals with the labor question from the labor side of it, and involves investigations into matters in which the Bureau of Corporations can not make its investigations with the same degree of efficiency, because of its lack of knowledge of this business, as could, for example, Mr. Neill, of the Bureau of Labor, or a special commission whose members would supposedly have qualifications for the determination of matters affecting more directly than they do the corporate organizations.

The CHAIRMAN. Now in that same Department there is a Commissioner of Labor, is there not?

Mr. GARFIELD. There is.

The CHAIRMAN. He would have jurisdiction over the labor side of a controversy such as is described in section 1, would he not?

Mr. GARFIELD. In so far as obtaining information would go, he would. I do not recall the exact scope of his functions.

The CHAIRMAN. As to obtaining information and giving publicity to the facts?

Mr. GARFIELD. Yes.

The CHAIRMAN. Then is it your opinion that the benefits to be derived from this legislation would consist of the extension of the authority of this act under the Government to cases of individuals and copartnerships and associations, as distinguished from corporations?

Mr. GARFIELD. Yes; in this sense, that it affords another agency for the dealing with particular instances.

The CHAIRMAN. Well, from that there would be no benefit, would there be, or if there would be, what would it be, in multiplying agencies, if we now have an agent with the ability as to time and opportunity to make the investigation?

Mr. GARFIELD. If there were already an agency that had the time and the funds, there certainly would be no need of establishing another.

The CHAIRMAN. Have we that agency now?

Mr. GARFIELD. I think not. I think that the Commissioner of Corporations could not, with the work now being carried on and with the appropriations at his disposal, by any possibility attempt to conduct a special investigation of a great strike.

Mr. ADAMSON. Mr. Chairman, I do not desire to interrupt your line of questions, but just there he repeated the same thing, and I wish to call your attention, as well as his, to it: That it seems to be the idea of Mr. Garfield that the authority of the Commissioner of Corporations to investigate is limited to the fact that wages and strikes and laborers are involved. I would like to ask him whether his jurisdiction over corporations does not involve the right to inquire into all incidents and elements that those corporations deal in, including labor?

Mr. GARFIELD. There is no doubt about that.

The CHAIRMAN. Here is a condition that is described in the first section of the bill: The commerce of the United States is interrupted. In the investigation of that matter would you not have the right, as Commissioner of Commerce, without regard to questions of labor—although questions of labor were involved also—to investigate that matter and give publicity to the causes of that interruption?

Mr. GARFIELD. I have no doubt but that that can be done by the Commissioner of Corporations.

The CHAIRMAN. And in that way bring about or exert this moral influence?

Mr. GARFIELD. I have no doubt that can be done under the law.

The CHAIRMAN. Under the law to-day?

Mr. GARFIELD. Yes.

Mr. WANGER. Are there appropriations sufficient available for that purpose?

Mr. GARFIELD. There would not be.

Mr. MANN. Is it not just as easy for Congress to appropriate for the Bureau of Corporations as it would be to appropriate in some other way?

Mr. GARFIELD. Yes; but the question there, Mr. Mann, would be this: That it would be quite beyond the physical possibility or ability of one man to attempt to hold hearings or make investigations of the many cases of strikes or differences between employers and employees.

Mr. MANN. The Commissioner of Corporations, I take it, does not do all the work in that Department?

Mr. GARFIELD. Under the law there are just two officers authorized to conduct hearings. Those are the Commissioner and his deputy.

Mr. MANN. Only two officers authorized to take testimony; but you have done that. You have made many investigations, but thus far you have never invoked that part of the law.

Mr. GARFIELD. I beg pardon; we have.

Mr. MANN. In what cases?

Mr. GARFIELD. I have done so in the oil cases.

Mr. MANN. But it has been invoked very little and very seldom.

Mr. GARFIELD. Not very much.

Mr. MANN. You have usually operated under the general authority through other officials?

Mr. GARFIELD. It was simply because the people concerned made no opposition. When you come to parties in controversy then the parties will not come until they have to.

Mr. MANN. Do you think we will have enough controversies in the United States so that the deputy or the Commissioner himself could not have a hearing occasionally and exercise that authority given in that part of the law that has not been exercised two weeks since the law went into force?

Mr. GARFIELD. The Commissioner or his deputy have not been sitting by idly waiting for opportunities.

Mr. MANN. The work done by the deputy can just as well be performed by some one else. Let him perform the functions that he can perform. Would not that be practicable?

Mr. GARFIELD. It would be under certain circumstances.

Mr. ADAMSON. I believe you sanction the idea that the exercise of this power would discourage wrongdoing and give less reason for

these investigations. If that doctrine applies, there will be time to ask for help when you are crowded.

Mr. GARFIELD. You could not tell until you tried it.

Mr. MANN. Do you have any occasion to exercise the authority now conferred upon the Commissioner and the Deputy Commissioner of Corporations?

Mr. GARFIELD. I have.

Mr. MANN. In case of any controversy between a corporation and its employees over wages or hours, or anything of that sort?

Mr. GARFIELD. No, sir; we have not.

Mr. RICHARDSON. Now, Mr. Garfield, is it not a fact that under the publicity or publication provision of the law creating the Department of Commerce and Labor you have authority to do this; that the Commissioner of Corporations has this authority to investigate any matter, for instance, in the nature of a strike, and to employ all the facilities and necessary aids that he desires to make a thorough investigation to find out those facts, what they are, and to submit them to the President of the United States, and that he has got the authority to suppress any of the facts under that publication section that he pleases, and publish the others? Now, what additional help or aid in the matter of investigation under this bill would you have more than you have now under the proposed law, in that seventh section?

Mr. GARFIELD. I have no doubt but that under the law as it now stands either the President or Congress or the Secretary could direct the Bureau of Corporations to make an investigation of any conditions that arose as a result of a strike, and that he would have full authority to obtain all the facts.

Mr. RICHARDSON. And submit them to the President?

Mr. GARFIELD. Yes; and submit to the President.

Mr. RICHARDSON. And the President has the right to suppress or publish the facts, as he pleases?

Mr. GARFIELD. Undoubtedly.

Mr. RICHARDSON. What other authority could he have for the welfare and advancement of the country beyond that?

Mr. RYAN. Might not the Commissioner of Labor act in the same capacity?

Mr. GARFIELD. I do not recall the scope of the authority given to the Commissioner of Labor.

Mr. MANN. My recollection is that it is even broader.

Mr. RICHARDSON. Have you not invoked that authority yourself?

Mr. GARFIELD. Not so far as it affects the relations between capital and labor.

Mr. RICHARDSON. But you have authority to do so?

Mr. GARFIELD. Without doubt there is authority to make examinations into any copartnership, firm, or corporation. The authority exists there, without doubt.

Mr. TOWNSEND. Would you have authority to compel the attendance of witnesses in investigating the labor side of a controversy of that kind?

Mr. GARFIELD. If it affected the conduct and management of a corporation we would.

Mr. TOWNSEND. If it simply affected interstate commerce that resulted from a strike would you feel authorized under the authority given you to investigate a case of that kind?

Mr. GARFIELD. It would depend entirely upon each instance as it arose. There might not be the authority if it arose in such a way as not to affect the conduct or management or operation of the corporation.

Mr. TOWNSEND. The Bureau was not organized with the idea of investigating strikes that did not directly affect the corporation itself?

Mr. GARFIELD. Certainly not.

Mr. TOWNSEND. It was not intended to investigate matters resulting from a strike in which the corporation people were not directly interested?

Mr. GARFIELD. So far as I know, that is right.

Mr. MANN. But the law did contemplate that you could make an investigation of that kind.

Mr. GARFIELD. I may say it would affect railroads in that way.

Mr. TOWNSEND. I am getting at that. You have not anything to do with railroads?

Mr. GARFIELD. No, sir; nor any other common carriers covered by the interstate-commerce law.

Mr. MANN. There would be a question about the express companies?

Mr. GARFIELD. As I understand it, they were included, and the Interstate Commerce Commission is now exercising authority over them under the recent act.

Mr. MANN. The act creating your Bureau and Department was passed at a time when it was held that they were excluded, and I take it that there was nothing in the new act which took away any jurisdiction that you had, if you had it.

Mr. TOWNSEND. Now that Mr. Mann has brought up the legal proposition, I want to ask you your opinion of that. Do I understand, inasmuch as the law has declared express companies and Pullman car companies to be common carriers, that your Bureau of Corporations would have jurisdiction over them now?

Mr. GARFIELD. No; I think it would not.

Mr. RICHARDSON. Is it not a fact, Mr. Garfield, that under the publicity clause of the act which created the Department of Commerce and Labor, the President of the United States has the right to suggest to you to make any investigation that he sees proper connected with corporation matters?

Mr. GARFIELD. He can, and either House of Congress can.

Mr. RICHARDSON. And, incidental to doing that, to employ any persons you deem necessary to carry out those suggestions?

Mr. GARFIELD. Undoubtedly.

Mr. TOWNSEND. Do you think the President has any authority under the law to ask your Department to investigate a common carrier?

Mr. GARFIELD. No; I always refer, in speaking of jurisdiction, to the jurisdiction conferred upon the Bureau of Corporations.

Mr. TOWNSEND. I understood Mr. Richardson to say that it included railroads.

Mr. RICHARDSON. Under the publicity clause the law gives the President authority to suggest to the Bureau of Corporations any investigations that he thinks proper to have made concerning corporation matters. I have a very distinct recollection, as the chairman of this committee has, and as I think Mr. Mann has, of all that discus-

sion about the publicity clause and about the scope it took and the discussions on the conference report.

Mr. TOWNSEND. Now, as to the value of the publicity feature of the work of this proposed commission, you have had one case in point recently, have you not? I know the Bureau of Labor has, with reference to the Texas strike.

Mr. GARFIELD. That is under the Bureau of Labor, and I have no information on that subject.

Mr. TOWNSEND. Mr. Neill knows about that?

Mr. GARFIELD. Yes; Mr. Neill knows about that. The case that has been principally before the Bureau of Corporations was the Standard Oil investigation. As a result of the investigation of the Standard Oil Company every discrimination that that company has received, every rebate that has been granted to it, and every form of device it has utilized for the purpose of obtaining an advantage over its competitors, so far as it affected transportation, has been stopped since the publication of the report on transportation. The independent refiners and producers of oil tell me that it is the first time for twenty-five years that they have been free from the discriminations that have been practiced against them and in favor of the Standard Oil Company. This has been accomplished by publicity. The facts being given, the practices have stopped. The giving of the facts has stopped these discriminations.

Mr. MANN. The fines have not been levied?

Mr. GARFIELD. They have not been levied yet.

Mr. MANN. Not against the Standard Oil Company, but against the railroad companies.

Mr. RYAN. Now, in regard to your Bureau making an investigation of a great railroad trouble, when this Department of Commerce and Labor was created there was a great deal of discussion as to whether or not labor would be represented in the Department. Now, there is a Bureau of Corporations and a Bureau of Labor. Do you think, in view of that discussion and of the feeling among the laboring interests of the country, that an investigation made by the Bureau of Corporations would be considered satisfactory by one of these parties interested in the great strike—by the striking men, for example?

Mr. GARFIELD. I think that would be determined by the character of the investigation—its carefulness, the degree of efficiency shown in making the investigation, and so on. I do not believe that the mere fact that one organization or the other of the Government makes the investigation would prejudice the result in the minds of the people affected by it. I think the acceptance of the result would be determined by the efficiency and the character of the investigation itself.

Mr. STEVENS. I would like, Mr. Garfield, to call your attention to the first section of the act. The scope is considerably wider than this discussion has indicated. It provides, first, for controversies concerning the transportation of the United States mails; second, concerning civil operations of the Government of the United States; third, concerning the military operations of the Government of the United States; and fourth, concerning the movement of commerce among the several States and with foreign nations. Now, there are four classes of functions of the United States Government. First, for the transportation of the United States mails: Are not the laws

adequate by which the Post-Office Department can protect itself at present?

Mr. GARFIELD. I can not speak fully on that, because I do not know the laws; but I suppose they are.

Mr. STEVENS. Has any complaint come to your knowledge that the Post-Office Department can not protect itself in the transportation of the mails on account of controversies of one sort or another?

Mr. GARFIELD. No such complaints have reached me.

Mr. STEVENS. Second, civil operations of the Government of the United States: I take it, that would affect the Treasury Department. Has anything come to your knowledge that the Treasury Department could not protect itself?

Mr. GARFIELD. I have never heard of it.

Mr. STEVENS. Then the Interior Department—I suppose that would affect the Geological Survey, the pensions, the public lands, and the Indians. Has any knowledge come to you that that Department could not protect itself?

Mr. GARFIELD. Not that I am aware of.

Mr. STEVENS. Then, as to the Department of Justice, has any knowledge come to you that the Department of Justice could not protect itself or could not protect the interests of the Government when any controversy arose?

Mr. GARFIELD. I have never heard of it.

Mr. STEVENS. Then, as to the Department of Agriculture, has any knowledge come to you that the Department of Agriculture could not protect itself?

Mr. GARFIELD. Not that I have heard of.

Mr. STEVENS. Then, as to the military departments, the War and Navy; they could certainly protect themselves in any controversy that arose, so that this act would resolve itself finally, since your Department has already jurisdiction of corporations, to matters relating to individuals and partnerships engaged in interstate commerce.

Mr. MANN. Do you think this could be stretched far enough to investigate the Brownsville affair?

Mr. STEVENS. I do not know, but in the last analysis this would resolve itself into a change of law, affecting the rights of partnerships engaged in interstate commerce.

Mr. GARFIELD. I have not studied it, but from your statement it would seem to be so.

Mr. STEVENS. That is about what it would analyze into. What we want to find out is exactly what this law if enacted would accomplish.

Mr. GARFIELD. I can not tell you that, because I am not the author of it. I am speaking of the general proposition of the effect of publicity.

Mr. BURKE. Since you have been in your present position, Mr. Garfield, do you have in mind any case where a corporation has been affected, where there has been a strike, wherein you would have recommended the appointment of a commission, as provided by this bill, if this bill had been the law during that time?

Mr. GARFIELD. Yes; there are two instances that I think of now.

Mr. BURKE. What are they?

Mr. GARFIELD. The strike with the packers in Chicago, and the strike with the teamsters in Chicago. I believe that in the case of either one of those a Federal commission organized in this way might have been of very material benefit to both sides in those controversies.

Mr. KENNEDY. And as to the anthracite coal strike?

Mr. GARFIELD. That was prior to the organization of the Bureau, you will remember.

Mr. KENNEDY. Yes. The purpose of the proposed law is supposed to be to provide something that could be quickly employed in cases of great exigency, such as these strikes put upon the country?

Mr. GARFIELD. Yes; and in connection with that packers' strike this occurs to me, and it bears directly on one of the questions formerly asked me regarding the powers of the Bureau of Corporations in such cases: My men were in Chicago at that time investigating the other side of the beef-packing industry, and I found that there was the greatest suspicion of the agents who had anything to do with the packers' books in any way. They said, "Here the Commissioner of Corporations is investigating the packers' side of this thing. Therefore we do not want to give any information to the Commissioner of Corporations, because he deals with the corporate side of this thing." One of my agents out there who knew the labor men very well was able, however, to get some information from them, but he said that the men felt just that way about it. The mere fact of the name being the "Commissioner of Corporations" led those men to believe that the Federal agency dealing with corporations was not the agency that they would want to submit their facts to.

Mr. ADAMSON. They did not understand that the Bureau of Corporations is established for the purpose of curbing and regulating corporations rather than promoting them?

Mr. GARFIELD. They did not seem to understand that.

Mr. MANN. How widespread was the packers' strike?

Mr. GARFIELD. It was local, of course.

Mr. MANN. It did not extend outside of Chicago, did it?

Mr. GARFIELD. No; but it affected the business interests of the country, of course.

Mr. MANN. How widespread was the teamsters' strike in Chicago? Did that extend outside of Chicago at all?

Mr. GARFIELD. Only in so far as it might have affected traffic.

Mr. MANN. I mean the strike. I am not talking about the effect.

Mr. GARFIELD. I was speaking of the reasons why the Federal Government might have interfered in those cases.

Mr. MANN. I asked you whether the strike extended beyond the local center in Chicago?

Mr. GARFIELD. I think not, so far as the men going out and on strike were concerned.

Mr. MANN. My recollection is the same as yours as to that, although I was not absolutely certain as to either one of them. In your judgment a strike that is purely local, so far as the strike itself is concerned, is still of sufficient importance to warrant the appointment of a commission by the President?

Mr. GARFIELD. Not necessarily. You would have to determine that by the effect it has upon commerce at large.

Mr. MANN. Your judgment is that these strikes, though purely

local, were of sufficient importance to warrant the appointment of a board of arbitration by the President?

Mr. GARFIELD. Yes; because in each instance I understand that they did seriously interfere with the general movement of traffic. I do not mean by that the local traffic, but the traffic that affected the movement of the commodities in and out of the city, involved in interstate commerce.

Mr. MANN. The teamsters' strike at Chicago, of course, could not interfere to a great extent with any traffic except traffic emanating from Chicago.

Mr. ADAMSON. Where it was destined to other points in the Union.

Mr. MANN. There are other ways of getting railroad freight in and out of Chicago than by teams.

Mr. GARFIELD. If it did not affect interstate commerce, then I was in error. I was under the impression that it did affect it.

Mr. MANN. There is no doubt but that it affects interstate commerce to move freight out of Illinois into Indiana; but what I wanted to get at was, How often in your judgment would a law like this, if enacted, be put into operation? It has been stated here, I may say to you, by some gentlemen the other day, that there ought not to have been an arbitration in the case of the teamsters' strike in Chicago. I asked that question, and it was said that it ought to be confined to cases where it is general over considerable sections of the country. Your judgment about that would be worth more than mine.

Mr. GARFIELD. It would be a matter of Executive discretion to determine how far it would affect the public interests. It would be for the Chief Executive to determine that.

Mr. MANN. This board would be appointed by the President. His actions would be guided necessarily by the representations to him. He can not have any personal knowledge of a strike somewhere else?

Mr. GARFIELD. Certainly.

Mr. MANN. He would be guided either by newspaper reports or by representations made to him by delegations, or by certain officials; likely by the Commissioner of Labor or the Commissioner of Corporations; so that it might not depend upon the judgment of the President, but upon the judgment of an official in some Department. We sometimes trace them down.

Mr. GARFIELD. It might even be upon the recommendation of some Members of Congress. [Laughter.]

Mr. MANN. It is very seldom that any of the Executive Departments act upon the recommendation of Congress. That is my experience.

Mr. ESCH. In the great railroad strike of 1894, at its center in Chicago, there was not only involved interstate commerce, but also the transit of the mails and the use of the military. Now, the military department could settle the military difficulty, but not the interstate-commerce difficulty. The Post-Office Department could settle the mail duties, and still not the interstate-commerce features, so that, after all, there would still be a function for your commission to perform in settling the trouble?

Mr. GARFIELD. No doubt, so far as the interstate-commerce question is concerned, there would be.

Mr. ESCH. So that there would be a function for such a commission in the cases which Mr. Stevens mentioned?

Mr. GARFIELD. Undoubtedly.

Mr. TOWNSEND. There is a question as to policy whether that ought to be done. There is no question about the power. It is as to the policy or propriety of what ought to be done?

Mr. GARFIELD. Undoubtedly.

Mr. MANN. Is there not a question, Mr. Garfield—you have investigated the subject as to your power, the power conferred upon you—is there not some question of constitutional authority in that section of the act creating your Bureau?

Mr. GARFIELD. There could be a question about any act that could be passed. I think Congress was well within its powers in granting to or imposing upon the Commissioner of Corporations the duties conferred upon him by that act.

Mr. MANN. Yes; constitutional questions may arise about anything. But is there not a wide divergence of opinion as to how far the Federal Government can interfere in any State with the manufacturing enterprises within the borders of the State?

Mr. GARFIELD. Not so much as there used to be.

Mr. MANN. Some cases where the Federal Government did interfere might be declared unconstitutional?

Mr. GARFIELD. It might happen at times.

The CHAIRMAN. Mr. Garfield, is it not your observation that in the settlement by outsiders of disputes between corporations and their employees those settlements are usually made upon a basis of increase of wages?

Mr. GARFIELD. I have not sufficient information, Mr. Hepburn, to answer that question, or to say what the statistics would show.

The CHAIRMAN. There may be many causes—questions of hours, you might say, or questions of wages; but is it not your observation that the settlement or adjustment is usually upon the basis of a waiver of the question of hours and an agreement upon an increase of wages?

Mr. GARFIELD. My general impression is that, but I have not accurate information upon which to state it definitely.

The CHAIRMAN. I supposed that was the case. Now, I would like to ask, supposing that to be the case, what would be the effect, if you have any opinion, of the enactment of this legislation upon the furtherance of that tendency? I can see how, where there is a dispute growing out of many subjects, it would be to the interest of the corporation to settle the dispute upon the increase of wages, because that burden thereby imposed can be shoved off upon the general public, and I thought I had noticed a tendency of that kind. If that is true, what would be the effect of this particular legislation as against legislation that would enlarge the functions of your bureau, if there would be any?

Mr. GARFIELD. I do not think the effect—if I grasp the question exactly—I do not think the effect would be much different, whether the machinery is put in operation through this special commission or through the Commissioner of Corporations, if his duties were enlarged and his appropriations were enlarged and he was required to

do this work. I do not see that there would be much difference between the two.

The CHAIRMAN. Would it not be more certainly fixed and more certain of operation when adjusted by an officer who was in place, and who was aware of the fact that these questions would have to be dealt with from time to time to secure a complete adjustment, rather than the adjustment of a single particular case, and, in that event, would not a sporadic commission look to the result, more particularly to the settlement of the single dispute, and put it on the basis of wages, rather than effect an adjustment that would involve perhaps further inquiries and the settlement of these other questions?

Mr. GARFIELD. Of course, there, again, it would result from or depend upon the personality of the commission. I think there still might be that tendency if the commission were appointed under certain circumstances to secure that result.

The CHAIRMAN. To secure an immediate adjustment of that kind, rather than adjustment upon broader principles, that would be much more permanent in character?

Mr. GARFIELD. That might be true, of course, but this is also true, that any adjustment made between the employer and employee is necessarily a temporary one, unless it happens to involve very broad and fundamental principles, which ordinarily these disputes do not involve. These settlements are nearly always temporary. They will come back again in the future years for reopening and readjustment of controversies.

Mr. RICHARDSON. The commission provided for in this bill, I understand, is temporary, is it not?

Mr. GARFIELD. Yes; for temporary periods in each instance.

Mr. TOWNSEND. Mr. Neill, we shall now be glad to hear from you, or, Mr. Chairman, will you tender the invitation?

The CHAIRMAN. No; I will defer to you in that. Proceed.

**STATEMENT OF MR. CHARLES P. NEILL, COMMISSIONER OF
LABOR, DEPARTMENT OF COMMERCE AND LABOR.**

Mr. TOWNSEND. Mr. Neill, what do you understand is now your authority under the law, as Commissioner of Labor, to investigate matters covered by this bill?

Mr. NEILL. As I understand it, Mr. Townsend, the Commissioner of Labor has the right to investigate anything that he can get information on, but he can not compel anyone to furnish information on any subject.

The CHAIRMAN. How is that, Mr. Neill?

Mr. NEILL. I say the bill creating the Bureau of Labor is very broad in one sense. We have the right to investigate almost any subject we want, but we have not the power to make any human being give evidence or information of any kind, and all the work the Bureau has ever done has been based on information voluntarily furnished.

Mr. KENNEDY. So that any report that you might make could be discounted, perhaps, by the statement that you had no information?

Mr. NEILL. No, sir; it could not be discounted for one second. Take, for example, our work on wages and prices. No mere statement of anybody is ever accepted. If the employer will not give our

agent access to his books, we will drop his establishment. Permission is voluntarily given to our agents to get the data.

Mr. ADAMSON. You do verify the information you get?

Mr. NEILL. Yes; or, rather, we get it ourselves. In all cases we get the information from original sources, and if permission is refused we make no attempt to get it or publish it.

Mr. TOWNSEND. I would like to have you state, Mr. Neill, if you would, your views—you have heard the discussion here this morning—as to the proposed scope of this commission and as to the powers that may be exercised by the Department of Commerce and Labor.

Mr. NEILL. Of course I am not a lawyer, Mr. Townsend, and I should be very reluctant to take issue with Mr. Garfield on any question of law. But I doubt very much whether the Bureau of Corporations, in view of the fact that such a thing was never dreamed of when it was created, could compel a labor organization to show their books or testify concerning very many things connected with a strike, and things of which it might be very important that the public should have knowledge, as, for example, the reasons for the inauguration of a strike and the means adopted to secure its inauguration, and the like.

There are very many questions there concerning which I doubt whether the Commissioner of Corporations would have the power to compel evidence. It might be important to look rather to the management of the labor organization than to the corporation, and it might be important to the public to know how sanely and conservatively and wisely and honestly that labor organization was being officered.

Mr. ADAMSON. Are these labor organizations incorporated?

Mr. NEILL. A few of them may be, but many of them are not. I do not know whether that is a fact that occurred to Mr. Garfield.

Mr. RYAN. That is a fact—that very few of them are incorporated.

Mr. NEILL. There would be many points in such an investigation that would be remote from the corporation. Take, for example, the Sam Parks strikes in New York and others that I know of. It would be very important to go in there and to get into the purpose and real motives behind the ordering of those strikes; but I do not believe that under the existing law the Commissioner of Corporations would have the power to go into that aspect of it, and to my mind that is one of the most important aspects. And I may say right here that in some of our most important strikes, which grow to very great lengths and inflict enormous damage on the public, there is improper action upon both sides, and just as much of it upon one side as upon the other.

Mr. ADAMSON. Are labor organizations reluctant to furnish their information?

Mr. NEILL. Both sides would be equally reluctant in the cases I have in view.

Mr. ADAMSON. The information I had was that they are always willing to show up.

Mr. NEILL. They are precisely like the rest of human beings; they are ready to show up anything to their own credit. I have never found a labor organization different from the employers' organizations when it comes to a question of human nature. They are identical in that respect.

If this bill were enacted into law, the moment any question in a strike became important enough some one could come in and enforce a complete revelation of practices on both sides, and that fear of publicity would have the great and beneficial effect of requiring that their matters be conducted on a thoroughly decent basis. I think that would be one of the most important effects of the bill.

MR. TOWNSEND. Are you familiar with that Texas matter down there?

MR. NEILL. Yes, sir.

MR. TOWNSEND. Were you in any way connected with it—I mean the recent strike on the Southern Pacific in Texas?

MR. NEILL. Yes, sir; I had a hand in the settlement of that strike.

MR. TOWNSEND. How did you get into that, Mr. Neill?

MR. NEILL. There is an act of Congress known as the "Erdman Act," which provides that in any case of a dispute between an interstate carrier and its employees which threatens to interrupt interstate commerce, upon the application of either party to the controversy the Chairman of the Interstate Commerce Commission and the Commissioner of Labor shall put themselves in communication with the other side and endeavor to act as a board of mediation, and, in the event of the failure of mediation, to endeavor to secure an arbitration. The act provides quite at length the *modus operandi* of the arbitration.

In this particular case the strike was to be called on Sunday. On the Saturday previous the railroad company telegraphed to the Chairman of the Interstate Commerce Commission and to the Commissioner of Labor, requesting them to act under the terms of this act and use their offices as mediators, and to try to bring about a settlement and prevent the strike. We were also requested by the other parties to the strike, by the firemen, to act in the matter, so that we went into the matter at the request of both sides to the controversy, and were thanked by both sides to the controversy at the end of it. Our action in the matter was entirely at their request, and until the end entirely with their consent and their good will.

MR. ADAMSON. Admitting the correctness of your opinion, that the existing law is defective as to the power of your Bureau and the Bureau of Corporations to compel testimony, would it not be easy to amend the existing law as to that?

MR. NEILL. I differ from the Commissioner of Corporations upon that point also. I do not think the opinion of any individual would carry the same effect—

MR. ADAMSON. You mean anyone who is an officer—

MR. NEILL. You can not discriminate between an officer and an individual. If he is biased as an individual, whatever bias he would have would affect him in his official as well as in his individual capacity.

MR. ADAMSON. It would be the same way, would it not, with the members of the Commission?

MR. NEILL. No. In that case you have two or three views there. In all these controversies are involved not merely questions of wages and as to hours of labor, but questions of right, questions of ethics. It has been so in the past and it is becoming increasingly so. Those questions of right and ethics are becoming more prominent every day

in strikes. They are matters upon which there is no definite crystallization of public opinion.

They are questions upon which many men feel very strongly on one side or the other, and many men having views, distinctive views, on this point or that point or the other would not be competent alone to investigate and make a report or place the blame in any individual case, whereas a commission of three men of different views would be more likely to bring in a report that would command public confidence.

Take the question of the closed shop, for example. It is a question upon which many men feel very strongly and have very settled convictions. It would be utterly useless to send a man with preconceived or biased notions upon that subject—a man whose judgment is made up in advance. It would be perfectly futile to send such a man into a controversy concerning the closed shop and to expect his conclusions to carry weight.

The CHAIRMAN. What do you mean by "closed shop?"

Mr. NEILL. I mean a shop in which a contract has been entered into with an organization of laboring men to employ only members of that organization in the shop.

Mr. MANN. That is a union shop?

Mr. NEILL. Yes.

Mr. ADAMSON. Closed to everybody else?

Mr. NEILL. Yes; closed except to the members of the union.

Mr. KENNEDY. An open shop is where anybody can be employed, union or nonunion?

Mr. NEILL. Yes.

Mr. ADAMSON. The only way to get a man without preconceived ideas on a subject is to get a man who does not know anything about it?

Mr. NEILL. No; get men of different views.

Mr. ADAMSON. If you had two men of directly opposite views, the third man would be the one who would make the determination.

Mr. NEILL. In cases like that the three of them might report a decision only on those points that could be agreed upon.

Mr. BURKE. Let us get back, gentlemen, to the Texas case.

Mr. TOWNSEND. Yes; and tell us, Mr. Neill, whether in any way it bears upon this controversy here.

Mr. NEILL. It does in one sense, Mr. Townsend. As a matter of fact, the controversy was brought to a settlement, and the parties are now in an arbitration under the provisions of the act of Congress. Before the settlement was reached there was at one time a very serious possibility—there was even a strong probability—that if a settlement was not reached in that controversy it would have extended over the entire Harriman System of railroads; an attempt would have been made to tie up the whole western section of the United States. If that point had been reached, if the efforts made under the present law had failed, and there had been no arbitration, I think it would have been very important that a commission should have gone in there very early and looked into the matter and fixed the responsibility for the extension of the strike.

In one sense there were three parties to the controversy resulting in the strike, each one disclaiming entirely and responsibility for the conditions; and some of them, if they had felt that a commission

was going to fix the responsibility for the strike on them directly, would have been much more amenable to mediation and conciliation; and the fear that the blame would have been fixed upon them for the intolerable conditions that would have resulted would have brought about a settlement much more quickly.

Mr. TOWNSEND. Who were the three parties, and what were the differences?

Mr. NEILL. This is a matter as to the discussion of which I feel some delicacy. In the first place, it was the most complicated industrial dispute of which I have had knowledge, and it would be difficult to state the facts off-hand without perhaps unfairly placing the blame; and, acting as a mediator between the three parties, I naturally came into more or less confidential relations with some of them, and therefore, unless the matter is considered to be one of great importance, I would prefer not to enter into details.

Mr. TOWNSEND. The matter is still pending?

Mr. NEILL. Yes.

Mr. BURKE. We might hear what brought about the strike?

Mr. NEILL. Yes. The Southern Pacific Railroad has contracts with both the firemen's organization and the engineers' organization. Recently, about six months ago, the contract with the engineers was reopened and certain changes made. The firemen then claimed that that change abrogated an existing contract which they, the firemen, had entered into with the company. The firemen sought to enforce a compliance with what they considered to be an amendment of their contract, but which the company denied was an amendment at all. Involved in the dispute was a jurisdictional dispute between the firemen and the engineers, so that any settlement between the company and the firemen was blocked by the fact that it infringed the jurisdiction of the engineers. The matter became extremely complicated, and very difficult to get a settlement on.

Mr. BURKE. Then by the three parties you mean, the railway company, the engineers, and the firemen?

Mr. NEILL. Yes, sir; and I say, as to each party to that, that I found this fact, which I think has a direct bearing on this bill: Each party was especially sensitive as to where the responsibility resided; and if the strike had gone further and had tied up the commerce of the Western States they would naturally have been still more sensitive, and some of them would have more readily made concessions if they had been aware that a commission could come in and investigate the thing from the beginning, and publish the result and fix the responsibility.

I think the effect of the bill would be that each party to a strike, before it became big enough to come within interstate commerce, would be very careful to consider its actions and its dealings and its responsibilities, because they would know that those actions and dealings and responsibilities would be held up to public scrutiny; and the effect of that would be that it would sometimes put an entirely different temper into strikes, on the part of employers and labor organizations alike.

Concerning this first clause of the bill, I would like to differ from the statement that has been made, that the Post-Office Department or any other Department of the Federal Government, even the Army or the Navy, has any power to protect itself in case of a strike. If

the strike were big enough there is no power on earth to move United States mails. You need an engineer and a fireman in any event, and if you can not get them the Post-Office Department or the Government would be helpless. If this strike had extended over the Harriman system no department in the States could have moved them.

(Thereupon, at 12 o'clock noon, the committee adjourned.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Tuesday, January 22, 1907.

The committee met this day at 10.30 o'clock a. m., Hon. James S. Sherman in the chair.

Mr. SHERMAN. Is there anybody here desiring to be heard on the arbitration bill?

Mr. TOWNSEND. Nobody besides Mr. Neill.

Mr. SHERMAN. Mr. Neill is here.

Mr. MANN. Here is the situation, Mr. Chairman: Some time last week the arbitration bill was set for Monday; the 2-cents-a-mile rate bill was set for Tuesday, to continue the hearings thereon. Yesterday morning the arbitration bill was laid aside in order to take up the sixteen-hour bill, with the understanding in the committee at the time, I think, that the arbitration bill would be taken up this morning. I do not know whether it was called to the attention of the committee at that time or not.

Mr. SHERMAN. Is there objection to proceeding now with the hearing on the arbitration bill and then adjourning this meeting, say, until to-morrow, for the further hearing of the 2-cents-a-mile bill after we finish this morning? If there is no objection, that will be the order.

Mr. GAINES. If there are persons out of town here who wish to speak on the 2-cents-a-mile bill, will not Mr. Neill be willing to come back to-morrow?

Mr. SHERMAN. How is that?

Mr. HARDWICK. It was the understanding that I was to go ahead this morning on the 2-cent rate bill. I have an engagement to-morrow afternoon to go to Raleigh, N. C., to appear before the legislature there on a similar hearing. Then I have an engagement in Richmond on Monday for a similar hearing there; and any other date that would suit the committee other than to-day would suit me.

Mr. SHERMAN. Is there any objection?

Mr. PAYSON. Mr. Chairman, may I make a suggestion? From what I know of the status of the arbitration bill, the examination of Mr. Neill will be very short, and if so, that would leave a half hour or three-quarters of an hour for Mr. Hardwick to-day.

Mr. SHERMAN. Very well. Let the order be that we will proceed with the arbitration bill for such time as is necessary to hear Mr. Neill, and then we will take up the 2-cents-a-mile bill.

Mr. HARDWICK. My statement will be rather brief. I should say that at the outside I will not take up more than an hour; but I think it would be more agreeable to the committee if I could make my statement in continuous form, without having to make part of it to-day

and part to-morrow, so that if this other matter is going to interfere to-day, and it is agreeable to the committee. I would rather come back to-morrow morning.

Mr. SHERMAN. We will again modify, and proceed, without objection, to the arbitration hearing now, and take a recess at the conclusion of our proceedings to-day until 10.30 o'clock to-morrow morning, when we will proceed with the 2-cents-a-mile bill. If there is no objection to that, we will now proceed on that order. Mr. Neill, we will hear you.

STATEMENT OF MR. CHARLES P. NEILL, COMMISSIONER OF LABOR, DEPARTMENT OF COMMERCE AND LABOR—Concluded.

Mr. NEILL. Mr. Chairman, I have nothing to say except whatever the committee wishes to make inquiries about. Understand me. I am not here, Mr. Chairman, at my own request or advocating any bill. I simply came at the request of the committee to discuss any matters which they should ask about in which they thought I could in any way assist them.

Mr. TOWNSEND. I would say, Mr. Chairman, that he was called back, after he had made a statement the other day, because a number of the committee said they wanted to ask him some questions.

Mr. SHERMAN. Mr. Neill, you have concluded your statement and are here to answer any inquiries that may be propounded?

Mr. NEILL. Yes, sir.

Mr. ESCH. I think when you closed, Mr. Neill, you were discussing the inability of the Government, for instance, to order the carrying of the mails. That is where you stopped?

Mr. NEILL. Yes. I think the point had been made that all the power given by this bill already existed, and that the Government is abundantly able to protect all of its civil and military functions.

Mr. STEVENS. Did you understand that from the questions I propounded?

Mr. NEILL. I think that was the impression.

Mr. STEVENS. I had no such intention in asking the questions.

Mr. NEILL. I understood it was suggested that the first page of the bill provided what the Government already had the power to do, and I suggested that in the event of a general strike, if the labor organizations were sufficiently united and the strike were sufficiently effective, there was no power whatever in the Government to turn a single wheel.

Mr. STEVENS. But, Mr. Neill, don't you know that the labor organizations are very reluctant to strike whenever they infringe upon a Federal law? Are they not reluctant, for instance, to strike against a street railway wherever the street railway carries the mail?

Mr. NEILL. I do not know whether they would be any more reluctant to withdraw from the service of a company that carries mail than from any other company if they felt they had a grievance.

Mr. STEVENS. Are they not reluctant to stop mail trains whenever there is a strike on a railway?

Mr. NEILL. A strike in what way?

Mr. STEVENS. To prevent the operation of the mails by violence, or in any way impede the transportation of the mail?

Mr. NEILL. I say if they had sufficient grievance they would not hesitate to withdraw from a company carrying the mail. I have known one or two cases in which they felt it was not necessary to interfere with the mails. They have agreed in those cases that they would withdraw from the service of the company, but leave men on mail trains so they would be free from interruption.

Mr. BURKE. Mr. Stevens's question is, Are they not more apt to refrain in such cases from using violence in stopping others from working?

Mr. SHERMAN. Mr. Stevens's question is broader than that. It is direct, whether or not Mr. Neill does not know that in contests where there have been strikes and violence the people using violence have specifically refrained from using violence when they have seen it was a mail train?

Mr. NEILL. Unquestionably. But I was speaking entirely aside from the question of violence. When you come to the question of violence, it is undoubtedly true that any person using violence would be more careful not to use violence in such a way as to prevent the interference of the Federal Government and the interposition of the Federal troops.

Mr. MANN. Is it not a matter of fact that different labor organizations at different times have protested against the practice known as that of permitting street cars to carry United States mails, because it would bring the Federal Government in conflict with the unions in case of strikes?

Mr. NEILL. I think they have felt, Mr. Mann, that it was an unfair advantage that was being taken by the street-car companies.

Mr. MANN. And they have protested?

Mr. NEILL. Yes; and they felt it was an attempt to involve them unnecessarily with the Federal Government. There is no question about that.

Mr. STEVENS. My point in the interrogation the other day was that the condition or sentiment on their part is a protection to any operation of the United States Government, which for the purposes of the Government would not require the passage of any additional legislation for governmental purposes—I mean, would not require the passage of any additional legislation.

Mr. NEILL. I did not intend, Mr. Stevens, to get into any argument over the question, but I shall say decidedly that it is a very weak form of protection. It simply relies on the good will of the various organizations, and they, being human beings, like the rest of us, that good will would be exercised only when it did not injure them, and if at any time it was necessary to tie up a mail train in order to bring about a condition which would enforce investigation they would do it.

I do not know that the labor organizations have this consciously in mind, but it is instinctively behind their actions. When they tie up any commodity or bring about intolerable conditions, it is with the belief and feeling that in the last analysis the public are responsible for the conditions complained of, and that in order to get any hearing and get the public to realize and adjust their grievances they have to make the public feel the brunt or pinch of it, and when they do that they think the public will then interfere and give them their day in

court. If it is necessary for a moment to tie up the mail trains in order to get a hearing on a proper grievance or to get justice, then they would tie up the mail trains.

Mr. GAINES. Then, Mr. Neill, would it not seem to involve the idea that the enactment of this legislation would be a temptation not only to strike, but, in the case of a strike, to endeavor wherever they could to distress the public and interfere with the transportation of Government mails in order to bring the Government into the matter? Would they not say, for instance, that instead of the Government exerting its power and enforcing the law and moving its mails, "The Government has the power to institute an investigation to see who is right and who is wrong," and that the Government should first make an investigation in every case and not enforce the law? In other words, wherever they wanted an investigation, would they not attack some Governmental agency, if possible, if we had such a bill as is proposed now?

Mr. NEILL. There are three points in reply to that, Mr. Gaines. In the first place, as I said in the beginning the other day, I do not think this power ought to be used except in very large and important disputes. In the second place, unless an organization had a grievance of sufficient importance to stand public scrutiny on it would not invite this power of investigation. In the third place, if it did have a grievance warranting it in doing that, I think it ought to compel investigation. That is, if the employees have a grievance of sufficient magnitude on which they can not get a hearing in any other way, I think they ought to force a hearing without the necessity of a prolonged strike.

Mr. STEVENS. Do you think it wise, as a matter of policy, of course, to submit to arbitration any controversy concerning the military power of the United States?

Mr. NEILL. I do not understand it is arbitration in that sense.

Mr. STEVENS. It submits the merits of a controversy to a select board—a controversy, say, which concerns the infringement of or the interference with the military authority of the United States. Do you think that is wise?

Mr. NEILL. Unquestionably, if there was any occasion for the military arm of the Government to act, it should act without regard to arbitration or anything else; unquestionably.

Mr. STEVENS. Is it not wise to let the military arm of the Government settle difficulties with the people in its own way rather than to call in an outside authority?

Mr. NEILL. I think so.

Mr. STEVENS. Then would it not be wise to strike out those words "or military," in the first section of this bill?

Mr. NEILL. In time of peace the military arm of the Government might be interfered with simply to the extent of having difficulty in transporting commissary supplies. It might be a small inconvenience, and a case in which the Government would not be warranted in calling out the troops and exercising its military power to enforce the transportation of its materials. If it was a question whether troops were needed at any place, of course the Government ought to use drastic means in transporting its troops. But that is a case that would occur with extreme rarity; probably never. But there would possibly never be a strike of any consequence on a common carrier

on which the operations of the War Department would not to some extent be interfered with. The transportation of their men and their supplies would be an inconvenience, slightly, no doubt. It would not be wise on account of such inconvenience to authorize the War Department to put into execution all the military power of the Government.

Mr. STEVENS. I know; but would not the cases you refer to be cared for under the last provision concerning the free and regular movement of the commerce between the States? Would not that be sufficient?

Mr. NEILL. I am not a lawyer, and—

Mr. TOWNSEND. What is your objection, Mr. Stevens?

Mr. STEVENS. My objection is that it is not wise to allow any commission or outside body to have any opportunity to interfere with the military power of the Government and to place any controversy involving the military power in the power of a board of arbitration.

Mr. KENNEDY. This would be cumulative. It would not interfere with any remedy that we already have.

Mr. STEVENS. If there was any interference with the military authorities there might possibly be a demand that a board of arbitration be appointed under the operations of this bill to consider the controversy concerning the military authority. I do not think the military authority of the country should be questioned.

Mr. TOWNSEND. Do you think there would be or might be any conflict there that would impair any one of them, and if so, is it not true that the Commander in Chief of the troops is the President of the United States, who is made the judge in this bill of the conditions under which the arbitration shall be invoked?

Mr. STEVENS. I do not think it would be a wise thing to do.

Mr. BARTLETT. In some localities that I know of the unions have passed resolutions forbidding the members to belong to the militia. I know that was the case a year or two ago, and a number of them withdrew from the militia. That happened, I say, a year or two ago.

Mr. STEVENS. It is not that the military operations could be interfered with. They could not be. But that sentiment might be created, and this might be a piece of machinery to increase the resentment of members of labor organizations against the military arm of the Government.

Mr. ESCH. Mr. Neill, going back to the mails, did not Judge Jenkins, in the celebrated injunction order in the Northern Pacific strike, I think in 1894, restrain trainmen from leaving trains carrying the mails?

Mr. NEILL. I remember that case very vaguely, Mr. Esch. I know the case, but my recollection is very vague at this time.

Mr. MANN. That was a case growing out of the Pullman strike?

Mr. ESCH. Yes.

Mr. MANN. Troops were sent to enforce the order.

Mr. NEILL. Troops were sent to prevent physical interference with the transportation of the mails.

Mr. KENNEDY. Did the order go to the extent of ordering the men not to quit work?

Mr. ESCH. I think that was Judge Jenkins's order on the Northern Pacific strike.

Mr. MANN. You may be right about that.

Mr. BARTLETT. I think he is right about it.

Mr. KENNEDY. That was not followed or sustained by the courts. That is beyond their power.

Mr. GAINES. The ground of it, as I recall, was that this was a conspiracy to interfere with the movement of the mails, and it prevented their leaving their work in a body in pursuance of that conspiracy which was declared to exist, and it was in the nature of a mandatory injunction to keep on with their trains.

Mr. MANN. In that case the men had quit work before the United States court had interfered at all.

Mr. SHERMAN. Is there any further inquiry to be made of Mr. Neill?

Mr. STEVENS. I would like to ask a question. Mr. Neill, you are familiar with the Australian and New Zealand laws?

Mr. NEILL. Yes.

Mr. STEVENS. Are you familiar with the provisions in their statutes relative to controversies concerning governmental functions?

Mr. NEILL. I do not recall precisely those laws, further than that there are half a dozen different systems in operation there. There is not a single system there at all. In some of them, my recollection is, though I am not clear on it at this time—my recollection is that governmental cases can come before their arbitration board as well as private cases. There is quite a misconception about the Australian systems. They are not one system, but four or five different systems, and what is true of any one of them to-day was not necessarily true last year, and may not be true of them a year hence.

Mr. STEVENS. You are familiar with the workings of those laws?

Mr. NEILL. In a general way.

Mr. STEVENS. Do you know whether any controversies have been submitted to that arbitration system concerning the operations of the Government—such controversies as we have just been discussing?

Mr. NEILL. I do not recall that there have been.

Mr. STEVENS. The only point I had in mind was that I would not want any arbitration system to get into a controversy concerning the operations of the Federal Government.

Mr. NEILL. I should quite agree with you there, that it was undesirable to have the Government abdicate its powers.

Mr. STEVENS. That is all, sir.

Mr. TOWNSEND. What can you say, Mr. Neill, as to whether, in your opinion, it would be better to have a commission appointed by some method similar to that contemplated in the bill, or to amend the law as it now exists and confer compulsory powers upon the arbitration board, consisting of the Chairman of the Interstate Commerce Commission and the Commissioner of Labor?

Mr. NEILL. I think that a commission such as is provided for in this law would be preferable.

Mr. TOWNSEND. Why?

Mr. NEILL. First, because it is important in every one of these disputes that everyone who sits on these arbitration boards, or, at least, a certain number or proportion of them, shall have actual knowledge of all the technical details of the industry in which the dispute has arisen; and on that account it would be important that every commission appointed should be appointed with a view especially of securing men of such special knowledge upon it. It might be a

good plan to have a nucleus of the commission permanent and add to it from time to time. But I think that the existence at any time of a part of the commission would be an inducement to use it in small cases, where it should not be used. I have tried to emphasize strongly my own opinion that this power should be used seldom, and I think the great value of this bill would be that it would have a moral effect and make its power seldom required, whereas I think a permanent commission would be more likely to be put in operation on a small excuse—much more likely than if the personnel had to be selected each time. And I think, further, that you could get men of better standing and of more weight in the community by selecting your commission at each particular time.

Mr. TOWNSEND. Now, what can you say as to whether, in your judgment, there is a growing necessity, owing to conditions of business and the organization of labor, and so on—a growing demand for some such agency as is contemplated in the bill?

Mr. NEILL. I think there is a growing necessity, on account of the fact that labor organizations themselves are becoming more and more solidified; and on the other hand our forms of business are becoming more and more under single control; and where formerly you had 50 different plants, now you have those 50 different plants placed under a single control, and a strike in one of them would now extend to all the plants of that same company, whereas formerly it might be confined to a single plant.

For example, if you had a strike to-day in any of the various plants of the United States Steel Corporation you would probably have a contest, finally, which might involve all the plants of that corporation, whereas before the consolidation the fight would have been directed only upon that particular plant where the immediate trouble occurred. To-day if a single department of a corporation inaugurates a strike, practically all the men in the employ of that corporation would very quickly go out if it was necessary to do that to win the strike in that particular place.

Mr. ADAMSON. Do you think it is more necessary to ascertain for the benefit of the public the facts in connection with a strike or labor controversy than it would be to secure the settlement of a particular strike?

Mr. NEILL. I think that ordinarily the moment the investigation began, in a majority of cases, both sides would be willing to return to the former status quo and leave the matter to be adjudged after this report was made.

Mr. ADAMSON. What do you say to a scheme of this kind—that when a difficulty arose involving interstate commerce or the mails each party should name at once an arbitrator, and the Government should name a third one, and the three together should settle the difficulty at once and put it on record?

Mr. NEILL. I think that would be compulsory arbitration.

Mr. ADAMSON. Of course it would be. If you are going to do anything, why not do it?

Mr. NEILL. There are certain fundamental principles and practices involved in these disputes that are so important to the parties concerned that any labor organization on the one hand and any employer on the other hand would prefer to go down to wreck and ruin

rather than to agree absolutely to submit to the decision of that principle by a disinterested party. They prefer to have their business ruined at once rather than submit to the acceptance of that principle.

Mr. ADAMSON. Do you not think if each party was going to select its own arbitrator it would select some one capable of judging its own rights as well as the Commissioner of Labor?

Mr. NEILL. In a case of that kind the third man would give the decision.

Mr. ADAMSON. Yes; but each one on each side could afford a good deal of information as to his line of business.

Mr. NEILL. Yes; but if they have a fixed opinion as to the rights of the controversy and either side feels that it is essential to their business or their organization, they will not submit it to arbitration, and they should not be compelled to do so.

Mr. ADAMSON. If the Government is going to appoint the one and each side concerned appoints another, then—

Mr. NEILL. I understand this bill does not compel either party to accept the decision of the tribunal.

Mr. ADAMSON. I know. If you are going into this thing, why not have something effective?

Mr. NEILL. Because I feel that under the present uncertain condition of public opinion as to what is right and what is not right in some of these disputes it would be most unfortunate to leave it to any individuals to say: "This, in our judgment, is right, and we are going to subject you to our view of it."

Mr. MANN. Would there be any objection if both sides were represented directly on the board of arbitration and the report of the board was required to be, as in jury cases, unanimous?

Mr. NEILL. No; I do not think there would be any objection whatever to that, Mr. Mann.

Mr. TOWNSEND. Would anything ever be accomplished in that?

Mr. NEILL. Yes; something would be accomplished in many cases.

Mr. MANN. Jurors often do agree when they have gone out with opposite views.

Mr. TOWNSEND. But you do not put the two parties to the controversy on the jury.

Mr. NEILL. Not only that, but in many contracts at the present time there is a provision for arbitration, which provides simply that these cases shall be submitted to a board of 6, 3 to be appointed by each side. It makes no provision for the seventh arbitrator. Those boards do settle many controversies. In the anthracite coal region, for example, there is a board of conciliation, as it is called, composed of 3 representatives of the miners, who are officers of the district organizations of the miners, and 3 representatives of the coal operators. They have had before them over 150 grievances. There is a provision that in case of a deadlock they shall apply to Judge Gray, or one of the judges of his circuit, for an umpire; and I believe that out of over 150 cases only about 20 cases have required the services of an umpire.

Mr. ADAMSON. If you had added to those six, three appointed by the Government or representing the Government, it would have been impartial and able, would it not?

Mr. NEILL. Yes; but neither side would be willing to submit to that tribunal certain questions that came up.

Mr. ADAMSON. In civilization all of us have to submit to certain things.

Mr. NEILL. The only place where we are compelled to submit our judgment to the judgment of the courts is in cases where public sentiment is crystallized as to what is right and what is wrong and where some law represents that crystallized sense of the community. In any proposition where the sentiment is as divided as it is now on many phases of the labor problem, and where the view held to-day may not be the view held ten years hence, I think it would be unwise and unfortunate to compel any body of men to submit to any board matters vital to their interests or their success, such as questions often involved in strikes, because you might thereby compel a man to go to jail because his action did not tally with some other man's individual view of what was right. It might have been an individual view impossible ever to have been enacted into law.

Mr. GAINES. This is an effort, as I understand it, to have hereafter Government intervention in matters which have heretofore been considered not fit subjects for Government supervision at all; in other words, the private relations between employer and employee in making their contracts with each other.

Mr. NEILL. As I understand it, there is no desire to interfere in any private relations between employer and employee until those relations result in an intolerable nuisance to the public.

Mr. GAINES. That would be at once the ground and occasion for this intervention?

Mr. NEILL. Exactly.

Mr. GAINES. But, after all, the intervention proposed is intervention by the Federal Government in matters not heretofore deemed proper subjects of governmental supervision.

Mr. NEILL. Unquestionably.

Mr. MANN. Mr. Neill, is there any authority conferred in this bill upon the special board of arbitration which the Bureau of Labor does not now possess, except the one of compulsory attendance of witnesses?

Mr. NEILL. The Bureau of Labor at the present time has no power to compel anyone to give information.

Mr. MANN. I say, excepting the compulsory attendance of witnesses?

Mr. NEILL. Of course that is the whole meat of the bill. It is simply the difference, I say—

Mr. MANN. I want to know if there is anything in this bill which would extend the authority your Bureau now has except the compulsory attendance of witnesses?

Mr. NEILL. No.

Mr. MANN. For instance, under the organic act establishing your Bureau the Commissioner of Labor—

is specially charged to investigate the causes of, and facts relating to, all controversies and disputes between employers and employees, as they may occur, and which may tend to interfere with the welfare of the people of the different States, and report thereon to Congress.

Now, is the authority in this bill any broader than that as to the scope of the investigation? It can not be any broader than that act.

Mr. NEILL. None whatever.

Mr. MANN. The only distinction in this bill is that it makes a

board of arbitration instead of the Commissioner of Labor; and second, it authorizes the compulsory attendance of witnesses. Now, for instance, the House yesterday passed a Senate bill, I think, for the investigation by the Department of Commerce and Labor—very likely to be carried on by your Bureau or the Census Bureau—of the industrial conditions of women and children. Nothing is said in that bill about the compulsory attendance of witnesses.

It was disclaimed on the floor of the House that it carried any such authority. Under this bill that we have now could you make an investigation of the industrial conditions of women and children in the case of a strike, say in one of the southern cotton mills, and have compulsory attendance of witnesses?

MR. NEILL. Do you mean under this bill now?

MR. MANN. Under this bill pending here now.

MR. NEILL. I do not understand that the Commissioner of Labor would have any power whatever under this bill that he has not at present.

MR. MANN. I do not mean the Commissioner of Labor. I mean the board. Would not this pending bill here now confer on the board of arbitration practically the same jurisdiction in case of a strike and give them the authority to compel the attendance of witnesses, and thereby force a man running a cotton mill—say, for instance, who does not wish to give voluntary information—force him to give him the information asked for?

MR. NEILL. As I understand this bill and its purpose, Mr. Mann, it would not give that commission power to go into any mill in any small dispute, or in fact in any case until the strike reached such proportions as to become a serious menace to interstate commerce, or as to bring about serious conditions affecting the people of more than a single State.

MR. MANN. You understand that the bill itself does that; but I understand you to say that the bill itself provides for any dispute between an individual and an employee, leaving, of course, the exercise of the power to the administration for a proper reason.

MR. NEILL. My recollection is that the bill contains some clause stating that it should not be used unless there was serious interference with interstate commerce.

MR. MANN. I do not think that is in the bill.

MR. NEILL. If it is not, I agree with you that it certainly ought to be there.

MR. TOWNSEND. This is the clause which has been quoted so many times [reads]:

That whenever within any State or States, Territory or Territories of the United States a controversy concerning wages, hours of labor, or conditions of employment shall arise between an employer being an individual, partnership, association, corporation, or other combination, and the employees, or association, or combination of employees of such employer, by reason of which controversy the transportation of the United States mails, the operations, civil or military, of the Government of the United States, or the free and regular movement of commerce among the several States and with foreign nations is in the judgment of the President interrupted or directly affected, or threatened with being so interrupted or directly affected, the President shall in his discretion inquire into the same and investigate the causes thereof.

MR. NEILL. What number is it, Mr. Mann?

MR. TOWNSEND. H. R. 10840.

Mr. ADAMSON. A cotton factory in Massachusetts, for example, is just as "constitutional" and just as tender as a cotton factory in the South when you trample on its toes. When goods are manufactured in a State and those goods are shipped out of that State, a strike in the factory might interrupt interstate commerce. I want to inquire if a factory incorporated or chartered under the State of Massachusetts, under the laws of Massachusetts, had a strike, no matter how serious, that interrupted the operation of the factory and the shipping of goods abroad, whether the President would go into that State and have a Federal investigation?

Mr. NEILL. As I have said all the way along, I think this power should be exercised very sparingly.

Mr. ADAMSON. I will take out the word "sparingly." I will make it the biggest factory in the United States. I will make it a dozen factories, if you will.

Mr. NEILL. I am frank to say that there should be an investigation of that, in my judgment. If there is any business organization in the United States, no matter whether it is within the confines of a single city or not, which builds up such a large business that I, living in another State, depend upon that organization for my commodity, and that factory gets into a controversy with its employees, I think I have the right to have somebody go in there and see if I am deprived of the commodity, which I am dependent upon, without just or sufficient cause.

Mr. ADAMSON. My information is that the largest single tobacco factory in the United States is located in Georgia.

Mr. MANN. All big things are in the South, you know.

Mr. ADAMSON. No; if that were in Illinois it would be just about the same. They ship that tobacco out of the State. You say if there is a strike there and the commerce is interrupted that ought to be investigated?

Mr. NEILL. No, sir. I did not say that. I said that whenever any employer or producer developed his business to such a point that a large part of the public are dependent upon him, no matter what he is called, legally he becomes a quasi-public purveyor. You can not get around it. You may call him any legal name you want, but if any large part of the community becomes dependent upon a single producer, then they have the right to say that they shall not be incommoded by an unreasonable controversy between him and his employees.

Mr. MANN. He uses the word "community." You should make a distinction between community and Government as between the National and State Governments.

Mr. NEILL. I think my own position there is very clear, Mr. Mann. As I said a moment ago, we can get around it legally any way we want to, but in the modern development of industry when a man develops his business to such a point that I am solely dependent upon him and have to get my product from him or suffer deprivation in consequence if I can not get it from him, then I think outside communities have a warrant for interference, and the only interference we can get is through the National Government.

Mr. MANN. Take, for instance, a controversy or emulation or rivalry—I do not now think of a better term—between New England and the South as to the manufacture of cotton. Some Massachusetts

men think they will be driven out of the cotton manufacturing business. It is dependent somewhat upon the hours of labor and the class of labor. Do you think that Congress has the power in the case of a strike between the employees of a cotton mill in Massachusetts and the employers there to investigate the conditions of cotton manufacture in Georgia and all through the South, and make a recommendation as to legislation by Congress or otherwise, and compel people all over the country to come before them and reveal the details of their private business?

Mr. NEILL. Unquestionably not.

Mr. MANN. This bill purports to do that. Here is a strike between a cotton mill and its employees in Massachusetts. The determination as to the rights in that case may depend entirely upon the relation between the cotton-mill owners and their employees in Texas—their rivals in business.

Mr. NEILL. I can not see that the commission would have the right to go outside of the people immediately concerned in the controversy, and who had brought about the conditions which had been described as intolerable. Now, in order not to be misunderstood—

Mr. MANN. For instance, here is a strike between the producers of anthracite coal; the mine operators and their men. Do you think the board of arbitration would have any jurisdiction to inquire as to the conditions in the soft-coal regions?

Mr. NEILL. They might have the right to make such an inquiry there as could be made voluntarily.

Mr. MANN. I do not see anything in the bill that would give the compulsory right.

Mr. NEILL. If it is not in there, it should be.

Mr. TOWNSEND. You think it should be made compulsory on the people in actual controversy?

Mr. NEILL. Yes. As to the statement I made a moment ago, I realize that it was taking a very advanced stand, and I do not wish to be misunderstood upon it; I wish to be made perfectly clear. As I said a moment ago, if there is a strike and the supply, or a part of the supply, of any commodity is cut off, and I have any other resource and can secure that commodity from other producers, my first duty would be to turn there and secure it; and even if the price went up it would not on this account warrant the Federal Government in interfering. But if the situation should bring about a condition of absolute hardship, it would warrant the Government in interfering. I am as much averse as anybody to the Government's going in to settle any controversy that could be settled without its interference. But there ought to be no chance that this commission should interfere with or make inquiry into anybody's business who had not been a party to the creation of the intolerable conditions under which the public might be suffering.

Mr. KENNEDY. Do you think there would be any danger of our electing a President who would abuse the power to inquire into these big things by inquiring into little trivial affairs?

Mr. NEILL. No, sir; I have sufficient confidence in the public to believe that they are not going to elect that kind of a President.

Mr. MANN. I think that is a violent presumption.

Mr. KENNEDY. You are familiar with labor difficulties?

Mr. NEILL. I may be an optimist, Mr. Mann.

Mr. KENNEDY. You have had a great deal of experience with labor troubles. Are you able to state to the committee in how many cases the public sentiment has substantially been the judge that has settled those cases? I live in what seems to be a center of difficulties of that kind, and nearly every one of them that I have any knowledge of has been finally settled when the general public got to know the merits of the controversy.

Mr. NEILL. I can cite even better testimony than my own judgment of that matter. During the anthracite coal strike Mr. Mitchell stated that no organization could stand for one moment in the face of a well-informed public sentiment opposing either a particular strike or the methods of their organization. The only difficulty at present is that each side sometimes goes on—I do not wish this to be understood as being the common practice, but in large strikes it is entirely possible and does occur—but both sides resort to practices which aggravate the situation immeasurably, and which they would not resort to if they knew the actual facts were all to be brought out. Each side makes special pleas to the public to justify its acts, and hides its own practices.

Mr. KENNEDY. The stories of the walking delegate on the one hand and the employers on the other differ as far as night differs from day as to the merits of a controversy, as they give them out?

Mr. NEILL. Yes; and usually they are both partially wrong.

Mr. RICHARDSON. I want to point out the difference between this bill and the power and privileges that are given to the Department of Commerce and Labor under the publicity clause of the act creating that Department. Has not Commissioner Garfield, under the publicity clause of the act creating the Department of Commerce and Labor, the authority to direct you and to suggest men to go with you to make every inquiry into strikes and contests about wages and thus create that public opinion which you rely upon so much?

Mr. NEILL. As I understand it, the Commissioner of Corporations can not direct the Commissioner of Labor to do anything. The President could direct him, but even he can not direct him to make bricks without straw.

Mr. MANN. It is provided in the organic act.

Mr. NEILL. The organic act provides that he shall make any reports which the President may direct him to make.

Mr. RICHARDSON. The President has unquestionable authority under the act creating the Department of Commerce and Labor to ascertain, by inquiries to be made, certain facts, and when those facts are reported to him he can either refuse to or publish what part of the facts so submitted to him as he pleases. Now, is not that authority expressly given in that act to the Commissioner of Corporations, Mr. Garfield? If he is required to make an investigation of a labor controversy arising on any grounds he would not make an investigation of a labor controversy over your head without asking you to assist in it? You are not advocating anything that is compulsory. You simply want to have a verdict rendered by six or seven men that will stop right there and merely create that very public opinion which you maintain will result in acquiescence on both sides. Why not have three or four men associated with you under this act creating the Department of Commerce and Labor if the same good results would come as you claim would come under

this bill? Why create different forums of inquiry when you have now ample law for that purpose.

Mr. NEILL. Because the only thing we could do under the act creating our Department is to ask people to tell their story and publish it.

Mr. ADAMSON. Could you not find out all that this commission could find out?

Mr. NEILL. Up to this time I have advised against, and will advise against, the conferring of any inquisitorial powers upon the Commissioner of Labor. This bill which Mr. Mann speaks of provides that the same power shall be given as is given to the Director of the Census.

Mr. ADAMSON. It might be distasteful to you, but if you had the power to get the information, could you not get the same information that the board of arbitration could get?

Mr. TOWNSEND. He is endeavoring—

Mr. ADAMSON. You have not answered my question yet.

Mr. TOWNSEND. He is endeavoring to answer it.

Mr. KENNEDY. If the power was given, he would have it. That is what that sort of a question leads to.

Mr. ADAMSON. The question is, Why could you not get the same information that the commission could get if you had the same power?

Mr. SHERMAN. If you had the same power conferred upon you that the commission would have conferred upon it, you could obtain the same information that the commission could?

Mr. NEILL. Certainly; unquestionably, if you ask whether it could be done.

Mr. ADAMSON. I ask you. If we increase your powers so that you could force witnesses to disgorge, then could you not learn just as much as the commission could?

Mr. NEILL. I think we could.

Mr. GAINES. But, Mr. Neill, have you not insisted right along that after you had rendered one opinion—made one statement as to the merits of a controversy incidentally upon one side or the other—they would be afterwards less willing to have you make an investigation?

Mr. RYAN. It would be permanent, like any Bureau of the Government.

Mr. NEILL. Certainly.

Mr. TOWNSEND. I would like to have you say why you do not think that would be a wise thing.

Mr. NEILL. In the first place, going back to the suggestion I made a moment ago, in the present unsettled state as to the right and wrong of propositions involved in these disputes, I do not think it would be wise for any single man to be allowed to give his unbiased opinion and have the weight of the Government behind it. In the next place, after he had made his report, taking, for example, some question of fundamental importance to the organization of workmen or the employers, and reported upon it once, if another strike occurred and he was called upon to report again, they would not only put obstructions in his way, but an effort would be made by them to get rid of that official as an investigator. I think that would be fatal to the work of the Bureau. In the third place, I do not believe, Mr. Gaines, that the opinion of any single individual, no matter what

governmental position he holds, would be equal to the opinion of a commission composed, as this would probably be, of men of unquestioned high standing in the community.

Mr. RYAN. Both of employers and employees?

Mr. NEILL. Yes. Take for example, the case of the Anthracite Coal Strike Commission. Most of these were men whom you could not have in a governmental position such as we are discussing. Together they had a standing in the community far above that of any bureau chief in the United States, and their opinion carried weight because of the high standing of the men. This is illustrated also in the Texas Pacific dispute which recently occurred. One of the arbitrators is the president of a railroad himself, one of the most important men in his section of the country. And I think in a strike involving vital matters on this commission you could secure some of the most representative men in the United States—men of such standing and of such position that their opinion would carry more weight than any Government official.

Mr. RICHARDSON. Don't you think, on account of the growing interests of labor and their magnitude and the frequency of these mighty strikes, that there is a demand on account of its importance that the authority of the Bureau of Labor should be increased and should be made a department, with a head who shall be an executive officer in the Cabinet of the President?

Mr. NEILL. That is a question to which I have not given enough thought to make suggestions on.

Mr. RICHARDSON. It is a great question in the country. The President frequently calls upon leading labor leaders to come and confer with him. Would it not be much better and more convenient for him to have somebody in his Cabinet with whom he could advise on such matters?

Mr. MANN. Mr. Richardson is defending the position he took when the Department of Commerce and Labor was created.

Mr. NEILL. I think much could be said in behalf of that proposition.

Mr. RICHARDSON. It is true I did stand for the creation of a Department of Labor with a Secretary in the Cabinet of the President. The Democrats were all for it and the Republicans were against it. Subsequent events have convinced me of the correctness of my position at that time.

Mr. MANN. That can go into the record as being contradicted.

Mr. ADAMSON. If you will refer to the able reply I made on the floor of the House to Judge Richardson you will find that we have already secured a Department of Commerce. [Laughter.]

Mr. GAINES. In your answer to the question by Mr. Adamson, would you not also include, Mr. Neill, as one of the very important advantages of the commission over a Commissioner of Labor, for the purposes of the bill, this—that the necessity of raising a special commission in a case to be investigated would tend to promote the infrequency of the exercise of the power?

Mr. NEILL. Undoubtedly it would have that effect, and it would be a desirable effect. I think if the Commissioner of Labor were authorized to make these investigations they would be made three times as frequently as they would be if made by the commission.

Mr. GAINES. I think I would want to give this power, if to anybody, to a special commission.

Mr. KENNEDY. The commission would carry more weight, would it not, than the report of the Commissioner of Labor?

Mr. NEILL. Undoubtedly. I have repeated that very emphatically.

Mr. KENNEDY. The report of the Commissioner of Labor would be attacked by interested parties, saying, perhaps, he had decided in favor of the party that he thought had the most influence to sustain him in his place as Commissioner, whereas the commission would be absolutely free from such implication?

Mr. NEILL. Yes. I feel myself that there is really no room for discussion on the merits of the two propositions, as to whether the commission or a bureau chief should do it.

Mr. ADAMSON. All young lawyers recognize the right to cuss the court, and people generally imitate them, and in any position that a man gets into he can raise the same objection.

Mr. NEILL. But there is always a presumption in favor of the integrity and intelligence of the court.

Mr. MANN. That presumption is true with reference to the Commissioner of Labor.

Mr. NEILL. No; unfortunately I do not think it is. I do not think a commission would have been attacked as the Commissioner of Labor was attacked last year for a report on conditions in connection with the beef-packing industry in Chicago.

Mr. MANN. The official often thinks, because somebody does not agree with him, that he has been awfully abused after abusing somebody else.

Mr. NEILL. No. There is a presumption always in favor of the intelligence and honesty of the court, and the public rather resents a criticism of the court. In so far as an executive officer is concerned, I think the presumption is frequently a little the other way.

Mr. TOWNSEND. In the matter of a court, its business is to interpret the acts of Congress—the business of a Federal court?

Mr. NEILL. Undoubtedly—

Mr. TOWNSEND. On rules already laid down; and the success of this commission would depend upon its fairness, apparently, to the public.

Mr. ADAMSON. The experience you referred to, Mr. Commissioner, might be called a case where "blessed are ye when men shall revile you and persecute you, and say all manner of evil against you falsely," and "then shall the Lord say, 'Friend, come up higher, we will give you a better job.'"

Mr. NEILL. I am looking for my reward hereafter. [Laughter.]

Mr. STEVENS. I understand there are three statutes now in existence which cover somewhat the same field: First, the conciliation statute of 1898, which you recently acted under; second, the statute creating the Bureau or Department of Labor, which you work under, and third, the statute creating the Bureau of Corporations. These statutes confer about the same authority as is conferred in this act, except, first, the power to create a board, and second, the power to administer oaths and to compel compulsory testimony of individuals engaged in interstate commerce. I understand that the Bureau of Corporations has authority to investigate corporations, and you have authority to investigate individuals?

Mr. TOWNSEND. Outside of railroads.

Mr. STEVENS. Yes; outside of railroads, and the chairman of the Interstate Commerce Commission and the Commissioner of Labor under the conciliation act have the authority to investigate transportation companies. This act gives authority to administer oaths and compel compulsory attendance of witnesses engaged in interstate commerce outside of the transportation business?

Mr. NEILL. Yes.

Mr. TOWNSEND. The law of 1898, which may call into existence or into use the chairman of the Interstate Commerce Commission and the Commissioner of Labor, does not give you and the Interstate Commerce Commission the right at first under that law to proceed with all these investigations of your own motion?

Mr. NEILL. Oh, no. The law of 1898 only provides that the chairman of the Interstate Commerce Commission and the Commissioner of Labor shall simply act as mediators when requested by either side, and if arbitration is resorted to at all the arbitrators are selected by the two parties to the controversy, and then they do have the power to administer oaths and compel attendance. But the vital difference is that that body has no power to initiate investigations. The principal merit of this bill, in my judgment, is the power of initiative, without waiting for anybody's invitation.

Mr. STEVENS. First, the power of the initiative; second, the power to bring in individuals and corporations and investigate their affairs in a compulsory manner by means of the creation of a board; and next, the controversy concerning governmental functions, which does not now exist under any statute.

Mr. NEILL. As I said, Mr. Stevens, I speak with reluctance of any legal question, not being a lawyer; but I do not understand that the Bureau of Corporations at the time of its creation had any such thing as this in contemplation.

Mr. MANN. Such a thing as what?

Mr. NEILL. The investigation of a strike. I do not understand that the Bureau of Corporations or anybody else has any such power as the power to investigate the labor side of a strike.

Mr. STEVENS. The Bureau of Corporations can investigate the affairs of a corporation.

Mr. NEILL. It would be a very simple matter for those concerned in the affairs of a company or corporation to turn the management of a strike over to an individual to act for them. I do not think it will be possible for the Commissioner of Corporations to get behind that if it were tried.

Mr. MANN. Why?

Mr. NEILL. It would be no longer a question with a corporation, but a question with an individual.

Mr. MANN. Don't you think the Interstate Commerce Commission, when investigating the subject of railroad rates, for instance, could call anybody before it and put them under oath?

Mr. NEILL. I think they could if it is germane to the issue or question of railroad rates.

Mr. MANN. They are not confined to a corporation. They can call any individual before them. Of course as to the authority to investigate they depend upon whether it was germane or not. The questions put to the witnesses would have to be germane to the ques-

tion concerning the corporation, but would not a strike be germane to the subject of the investigation of a corporation?

Mr. NEILL. I can conceive of many important cases in which I do not think it would be, Mr. Mann.

Mr. RUSSELL. A man might be guilty of a subterfuge in order to evade the investigation itself.

Mr. NEILL. Yes. There is a tendency now for employers to form organizations similar to those of labor organizations, and when a strike is on the management of the strike on the part of the corporation may be turned over to an officer of this organization or an agent. This organization will contribute to the losses incurred by the employers, if losses are incurred, and the matter is then placed in the hands of a representative of a national corporation organization, not in the hands of the employer directly, and in the hands of a representative of the labor organizations, and from that time on the matter is in the hands of those two people mentioned.

Mr. MANN. Have you any doubt as to the authority of the Commissioner of Corporations to investigate that subject, including the compulsory attendance of witnesses?

Mr. NEILL. It seems to me, Mr. Mann, it would be very far-fetched to claim that he could go into that.

Mr. MANN. If that be so, this bill would not go any further than that.

Mr. NEILL. I think it would.

Mr. MANN. No; this bill does not contemplate a conflict between individuals. It is between a labor organization on one side and employers on the other side. There is no authority here unless the conflict is between the employer and employee.

Mr. NEILL. If that is not provided in the bill it would be a fatal omission.

Mr. MANN. It is very evident that Congress could not confer upon any commission authority as a national proposition to enter into a dispute between an employers' organization and an employees' organization which did not affect any commodity produced or controlled by anybody.

Mr. NEILL. I am speaking of conditions where the actual strike occurs, where the interference occurs. The plant may be tied up completely, but the proprietors of this plant withdraw from the controversy, and the controversy is then carried on between representatives of the associations on both sides.

Mr. TOWNSEND. Still affecting interstate commerce?

Mr. NEILL. Yes.

Mr. MANN. Then, under the law they can inquire into it as affecting the output of a corporation. If it does not affect the output of a corporation, then we have no jurisdiction to inquire into it for any purpose. Just as far as Congress can confer authority the authority is already conferred on the Bureau of Corporations.

Mr. NEILL. In that case the Bureau of Corporations would go to a certain point in the investigation and there find itself at a standstill.

Mr. MANN. If we have the constitutional jurisdiction, it can go all the way through.

Mr. STEVENS. I am of the same opinion with Mr. Mann—that the Bureau of Corporations has authority to investigate the work of corporations engaged in interstate commerce which may involve the

operations of a strike, but it has no authority to investigate individuals or partnerships. You have authority to investigate individuals and partnerships under the Bureau of Labor, but you have no power, we understand, to summon witnesses and have compulsory attendance, and so forth. I think that is the essence of this bill.

Mr. NEILL. Undoubtedly.

Mr. STEVENS. That is a question for the committee to determine—that particular thing?

Mr. NEILL. Yes. If one party is investigating one end of it, and another party another end of it, the power should be lodged in the same party. If the power is now lodged in the Bureau of Corporations, they ought to be allowed to go still further.

Mr. STEVENS. What I was trying to get at was how they could get further authority.

Mr. SHERMAN. Gentlemen, the hour for adjournment has arrived. We stand recessed until 10.30 o'clock to-morrow morning.

Mr. GAINES. Mr. Neill, could you file with your statement the several statutes that have been referred to similar in nature to this pending bill?

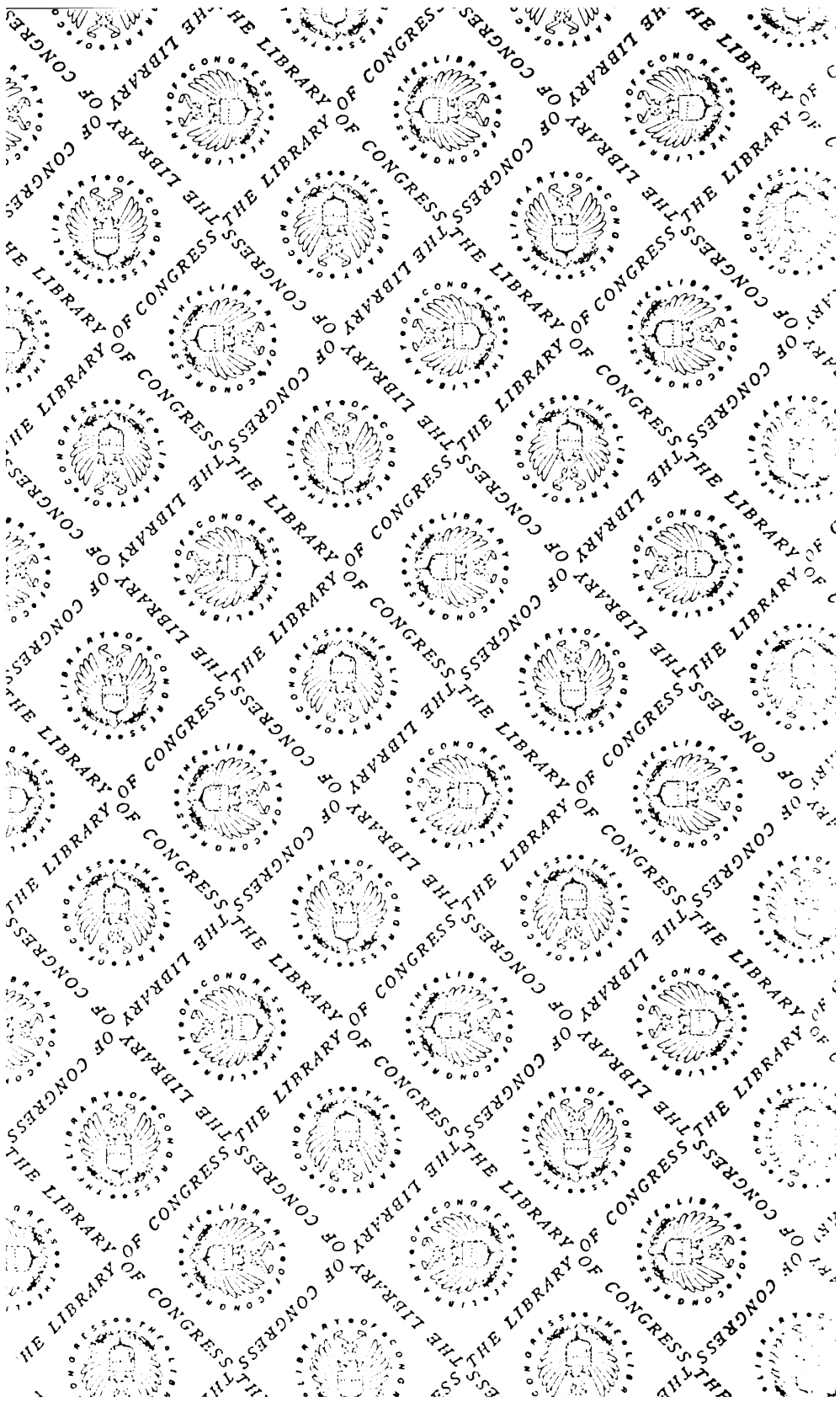
Mr. NEILL. Yes.

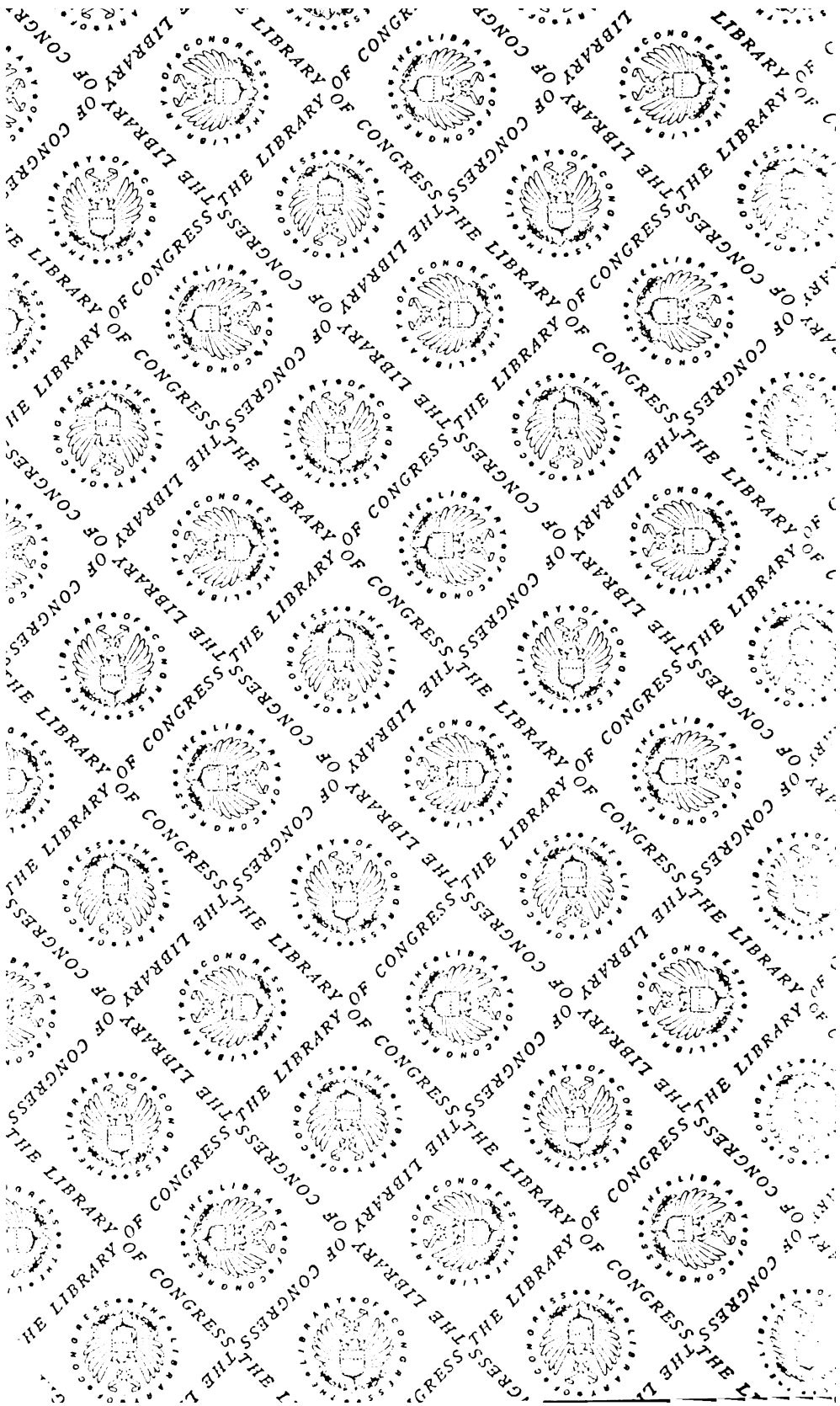
(Thereupon a recess was taken until 10.30 o'clock to-morrow morning, January 23, 1907.)

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